Environmental Documentation for Local Government Projects

Prepared by the
Maryland State Highway Administration

Environmental Documentation for Local Government Projects

Originally Published: September 2006
Revisions: August 2007, February 2011, June 2011, October 2011, April 2012, May 12, 2014 & July 2015

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Acronyms

ACHP	Advisory Council on Historic Preservation
ACOE	Army Corps of Engineers
ADA	Americans with Disabilities Act
ADT	Average Daily Traffic
APE	Area of Potential Effects
BSR	Bridge Sufficiency Rating
CE	Categorical Exclusion
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DEIS	Draft Environmental Impact Statement
DNR	Department of Natural Resources
DOI	Department of Interior
EA	Environmental Assessment
EIS	Environmental Impact Statement
EM	Environmental Manager
EPLD	Environmental Planning (staff)
FAPS	Federal Aid Program Section
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact
LG	Local Government
LOS	Level of Service
LWCF	Land and Water Conservation Fund
MDE	Maryland Department of Environment
MHT	Maryland Historical Trust
MOA	Memorandum of Agreement
MSAT	Mobile Source Air Toxins
MTA	Maryland Transit Administration
MTP	Metropolitan Transportation Plan
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NPS	National Park Service
NOA	Notice of Availability
NRHP	National Register of Historic Places
PCE	Programmatic Categorical Exclusion
PM 2.5	Particulate Matter
PS&E	Plans, Specifications, and Estimate
ROW	Right-of-Way
RTE	Rare, Threatened and Endangered Species
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act; A Legacy for Users
SHA	State Highway Administration
SLRT	State Long Range Transportation Plan
STIP	State Transportation Implementation Plan
SWPCE	Statewide Programmatic Categorical Exclusion
TIP	Transportation Implementation Plan
USC	United States Code
USCG	United States Coast Guard
USFWS	United States Fish and Wildlife Service
WMATA	Washington Metro Transit Administration
MAP-21	Moving Ahead for Progress in the 21st Century
TAP	Transportation Alternatives Program

I. Introduction

All Local Government (LG) projects using federal funds must comply with the requirements of federal and state laws to ensure that the environment is protected. The major laws that must be complied with are:

- National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4347]
- Section 106 of the National Historic Preservation Act [36 C.F.R 800]
- Section 4(f) of the Department of Transportation Act [49 U.S.C 303]
- Section 404 of the Clean Water Act [33 U.S.C. 1344]
- Section 7 of the Endangered Species Act [16 U.S.C. 1531-1544]
- Section 6(f) of the Land and Water Conservation Fund Act (LWCFA) [16 U.S.C. 4601-4604]
- Chesapeake Bay Critical Area and Atlantic Coastal Bays Critical Area Protection Program
- Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) MAP-21- See Appendix O
- Title VI of the Civil Rights Act and Executive Order 12898, Environmental Justice
- Americans with Disabilities Act of 1990 [28 C.F.R. 36]
- Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency"

This listing is in no way inclusive, as other federal and state laws and regulations may require compliance. The LG must provide evidence of compliance with these laws and regulations before federal funds will be authorized for a project.

The LG must provide evidence of compliance if they are using federal funds for:

- <u>Preliminary Engineering (PE) or Planning Phase:</u>
  Evidence of compliance consists of obtaining an approved environmental document from the Maryland State Highway Administration (SHA) if the PE phase will be federally funded. The approved document is valid only for PE, which is generally defined as the level of design necessary to determine environmental impacts, minimization or mitigation of impacts, or to complete the environmental document required for the final design, right-of-way or construction phase.

- <u>Final Design, Right-Of-Way, or Construction Phase:</u>
  Evidence of compliance consists of coordinating with the appropriate environmental agencies regarding the impacts of the project, or lack thereof, and obtaining an approved environmental document.

  The approved environmental document is required before the final design, right-of-way (property negotiation or acquisition), or construction phases of a project can begin. This document is separate from the document that is approved for the PE phase of a project. *Failure to obtain an approved document before starting*

any of these phases could result in the loss of federal funds. **In order for final design to continue without interruption, the work required to obtain the approved document must be completed as early as possible in the design process.** This is generally when enough work has been completed to determine the environmental impacts of a project.

If LGs intend to use federal funds for right-of-way activities, these activities (property negotiation or acquisition) cannot proceed until the environmental document has been approved **(Appendix A)**. However, exceptions can be permitted for situations that involve hardships and protective buys. It is acceptable for right-of-way activities such as title searches, preliminary map preparation and appraisals to be done concurrently with the NEPA process, per the Federal Highway Administration (FHWA).

The FHWA has requested that:

- LGs develop their projects in accordance with federal regulations and procedures on federal aid projects
- LGs do not contact FHWA directly
- SHA acts as a liaison between the LG and FHWA
- SHA review all documentation to be submitted to FHWA to ensure that the documentation is accurate and complete

Therefore, the Environmental Manager (EM) will be the LG's point of contact for all submissions, questions, guidance and reviews concerning the environmental coordination, laws and regulations, and documentation process to be followed.

The following items are useful resources that the LG can use to assist them in completing the environmental documentation process:

- Environmental Documentation Process Checklist **(Appendix B)**
- Environmental Documentation Flowchart **(Appendix C)**
- Useful Internet Resources **(Appendix D)**
- Agency Contact Information **(Appendix E)**

II. Environmental Laws and Regulations

A. National Environmental Policy Act (NEPA)

NEPA requires projects receiving federal funds to consider natural and socio-economic factors using a systematic, interdisciplinary approach before committing to a project. This process requires coordination with various environmental agencies to obtain information on cultural, socio-economic, and natural resources within the project area, documentation of any impacts upon those resources, and consideration of ways to avoid or minimize impacts as appropriate. Additional information on NEPA documentation classification can be found in Section III (pgs. 7-9) of this document. See **Appendix F** for a copy of the NEPA Regulations.

B. Section 106 of the National Historic Preservation Act (NHPA)

Section 106 requires projects receiving federal funds to consider the effect of the activity on significant historic structures and archeological resources.

C. Section 4(f) of the Department of Transportation Act

Section 4(f) provides special protection for publicly-owned public parks, recreation areas, and wildlife and waterfowl refuges, or significant historic sites. Additional information about Section 4(f) can be found in Section VI (pg. 23) of this document.

D. Section 404 of the Clean Water Act

Section 404 prohibits discharge of dredged or fill material into wetlands and waterways unless proven that steps have been taken to avoid and minimize wetland impacts where practicable, and unavoidable impacts are compensated through activities provided to restore or create wetlands.

E. Section 7 of the Endangered Species Act

Section 7 requires that federally assisted actions do not jeopardize the continued existence of any threatened or endangered (RTE) species or adversely modify the habitat of such species.

F. Section 6(f) of the Land and Water Conservation Fund Act (LWCFA)

Section 6(f) requires that federally assisted actions that propose impacts, or the permanent conversion, of outdoor recreation property that was acquired or developed with LWCFA grant assistance be approved by the Department of the Interior's National Park Service. Impacts to Section 6(f) lands must be mitigated through replacement lands of equal value, location, and usefulness.

G. Chesapeake Bay Critical Area and Atlantic Coastal Bays Critical Area Protection Program

The Chesapeake Bay Critical Area and Atlantic Coastal Bays Critical Area Protection Program establishes land use policies for development in the Critical Area which accommodate growth, minimize adverse impacts on water quality, and conserve fish, wildlife and plant habitat. The Critical Area is defined as any area within 1,000 feet of tidal influence.

H. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) & MAP-21; See Appendix O

SAFETEA-LU was signed into law by President Bush on August 10, 2005. Among its many features are steps to protect the environment and provide efficiency in the environmental review process. Most of these efforts are not related to projects that are typically completed by LGs, but there are changes that affect compliance with Section 4(f) under certain circumstances. Section 6001 and Section 6009 are most relevant to LG projects.

I. Title VI of the Civil Rights Act and Executive Order 12898, Environmental Justice

Title VI ensures that no person on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal funds. Executive Order 12898 requires agencies to identify and address, as appropriate, any disproportionately high and adverse human health or environmental effects of the project on minority populations and low-income populations.

J. Americans with Disabilities Act of 1990

This Act prohibits discrimination and ensures equal opportunity and access for persons with disabilities. This includes designing transportation projects to comply with ADA standards to ensure accessibility for persons with disabilities.

K. Limited English Proficiency-Executive Order 13166

Executive Order 13166 requires federal agencies to "implement a system by which limited *English-proficient* persons can meaningfully access… services consistent with, and without unduly burdening, the fundamental mission of the agency." Agencies that receive federal aid must follow the LEP policy as established by the lead federal agency. Activities may include making a good faith effort to involve LEP persons and communities in the project development process to provide project information and to gain input on the project's design, schedule and impacts.

III. Environmental Documents

This section provides a summary of the different types of environmental documents that can be required for federally funded projects. It is anticipated that most LG projects will be classified as either a CE or PCE, and some will also require the preparation of a Section 4(f) Evaluation. The EM will assist the LG in determining what type of environmental document is applicable to a project.

A. Categorical Exclusion (CE)

CEs are defined as projects that do not result in significant environmental effects, and are therefore excluded from the requirement to prepare an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS). A project qualifies for a CE only if the proposed actions do not:

- Induce significant impacts to planned growth or land use for the area
- Require the relocation of significant numbers of people
- Have significant impact on any natural, cultural, recreational, historic or other resource
- Involve significant air, noise or water quality impacts
- Have significant impacts on travel patterns
- Either individually or cumulatively, have any significant environmental impacts

A typical CE is three to five pages in length, plus the required attachments **(Appendix G)**. Refer to Section V for the evidence of coordination required for a CE.

All CEs, including those with a Section 4(f) Evaluation, will be forwarded by SHA to FHWA for comments and approval.

B. Programmatic Categorical Exclusion (PCE)

PCEs are a type of CE, however, they generally apply to projects that almost always have little or no environmental impact. PCE's are a streamlined way of completing CEs under an agreement between the SHA and FHWA. PCE's are divided into two categories; PCE's and Statewide PCE's (SWPCE). SWPCE's are an additional streamlined category which are applied to projects that happen on a reoccurring basis and have no environmental impacts (i.e. replacing traffic signal heads county-wide). It is at the discretion of SHA and FHWA to determine the applicability of a PCE or SWPCE for a project. The EM will assist the LG in determining if a PCE/SWPCE can apply to a project.

A PCE is a nine page checklist form that includes all the required attachments **(Appendix H)**. Refer to Section V for the evidence of coordination required for a PCE. PCEs will be approved by SHA's Division Chief or Assistant Division Chief of the Environmental Planning Division.

A SWPCE is a three page checklist form that includes all the required attachments **(Appendix H)**. Refer to Section V for the evidence of coordination required for a SWPCE. SWPCEs will be approved by SHA's Assistant Division Chief of the Environmental Planning Division.

C. Reevaluation

A written reevaluation of the approved environmental document is necessary when any one of the following conditions exists:

- There is a change to the project scope.
- The Final EIS has not been submitted to FHWA within 3 years from the date of the Draft EIS circulation (for projects that required an EIS).
- Federal approvals of major steps to advance the project (i.e. FHWA approval of PS&E) have not occurred within three years of NEPA approval.

New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in A FRR includes a standard form letter and the required attachments **(Appendix I)**.

Reevaluations for CEs and PCEs, will be approved by SHA's Division Chief of the Environmental Planning Division.

D. Section 4(f) Evaluation

Section 4(f) Evaluations are used if a federally funded project "uses" a Section 4(f) resource such as publicly-owned public parks, recreation areas, and wildlife or waterfowl refuges, or historic sites. Use of Section 4(f) resources can be defined as following:

- Land from a 4(f) site is **permanently incorporated** into a transportation facility (i.e. fee simple, perpetual easements, etc.)
- There is a **temporary occupancy** of land that is **adverse** in terms of the Section 4(f) statute's preservationist purposes (23 C.F.R. 771.135(p)(7)), or
- When there is a **constructive use** of land (23 C.F.R. 771.135(p)(2)) (i.e. noise, vibration impacts, etc.).

The EM will assist the LG in determining when a Section 4(f) use occurs and what the appropriate level of Section 4(f) documentation is. Early identification of Section 4(f) uses will help the project stay on schedule, as Section 4(f) Evaluations can add several months to the approval process.

Section 4(f) Evaluations, which are submitted concurrently with a CE, will be forwarded to FHWA for comments and approval. SHA is responsible for forwarding the document to FHWA.

Refer to Section VI for detailed information about the Section 4(f) documentation process.

E. Other Documents

- **Environmental Assessment** (EA)-For actions on which impacts to the environment are uncertain. EA's are prepared to determine the extent and level of environmental impacts. The EA can support two different outcomes, either a *Finding of No Significant Impact* (FONSI) or indicate that an *Environmental Impact Statement* (EIS) is warranted. The level of documentation is commensurate with the project scope and potential for environmental impacts.
- **Environmental Impact Statement** (EIS)-For actions that are likely to have significant impacts on the quality of the human environment or because they have the potential to create significant public controversy. Projects that usually require an EIS, as defined in 23 CFR 771.115, are:
    - New controlled-access freeway
    - Highway project of four or more lanes in a new location
    - New construction or extension of fixed rail transit facilities
    - New construction or extension of a separate roadway for buses or high-occupancy vehicles not located within an existing highway facility.

The LG should coordinate with the EM for further information regarding any projects that require an EA or an EIS.

IV. How to complete the environmental documentation process for projects using federal funds for the preliminary engineering or planning phase

A. Project initiation with the SHA Environmental Manager

The EM maintains a database of all LG projects that are using federal funds. In order for a project to be added to the LG Database, the project must be initiated by the LG. To initiate a project the LG must notify the Federal Aid Programming Section (FAPS) of their intent to use federal funds by submitting the following to the FAPS:

- Form 25c **(Appendix M)**
- Location map
- Contact information of the person completing the environmental documentation (name, phone, and email) for the LG

The project information submitted to the FAPS will be forwarded to the EM. Upon receipt, the EM will add the project information to the LG Database. No other action is required on the part of the LG.

B. Approval Process

The EM will prepare and submit a SWPCE for approval on behalf of the LG.

SWPCE's will be approved by SHA's Division Chief/Assistant Division Chief of the Environmental Planning Division and copies will be distributed to all appropriate people. The approval process will generally be completed within one to two weeks.

These SWPCE's are valid only for PE, which is generally defined as the level of design which is necessary to determine environmental impacts, minimization or mitigation of impacts, or to complete the environmental document required for the final design, right-of-way or construction phase.

V. How to complete the environmental documentation process for projects using federal funds for the final design, right-of-way, or construction phases

Appendix B contains the Environmental Documentation Process Checklist that LGs should use to keep track of a project and to ensure that all requirements are met. Additionally, **Appendix C** contains a flowchart to assist LGs in understanding and following the steps of the environmental documentation process. Please refer to Section III (pgs 7-9) for information on environmental document classifications.

A. Project initiation with the SHA Environmental Manager

The EM maintains a database of all LG projects that are using federal funds. In order for a project to be added to the LG Database, the project must be initiated by the LG.

To initiate a project the LG must notify the FAPS of their intent to use federal funds by submitting the following to the FAPS:

- Form 25c **(Appendix M)**
- Location map
- All environmental documentation completed to date
- Contact information of the person completing the environmental documentation (name, phone, and email) for the LG

The project information submitted to the FAPS will be forwarded to the EM. Upon receipt, the EM will:

- Add the project information to the LG Database
- Contact the LG to discuss coordination requirements specific to the project
- Help the LG to determine what type of environmental document is applicable for the project

B. Coordination requirements[1]

As part of the environmental documentation process, LGs are required to coordinate with several federal and state agencies regarding the environmental impacts of a project. This coordination must occur whether impacts regulated by that agency occur or not. See **Appendix E** for agency contact information.

At the LG's request, the EM will review any draft coordination letters to the agencies. In addition, when the LG obtains an agency response, the response should immediately be forwarded to the EM for review and determination of whether or not coordination with the responding agency is complete. Forwarding of the agency responses also allows the EM to maintain an accurate record of the project status.

Maryland Historical Trust (MHT)

The MHT is the approving authority for purposes of compliance with Section 106 of the NHPA. In this regard, the LG must:

- Define the area of potential effects (APE) for the project, taking into account direct and indirect impacts, including physical, visual intrusions, noise, and property acquisition
- Determine if any significant historic structures or districts, or archeological resources are present in the APE
- Assess the effects (no properties affected, no adverse effect, or adverse effect) of the project on any historic resources eligible for or listed on the National Register of Historic Places (NRHP)
- Provide all information to the MHT

[1] It is anticipated that most LG projects will be classified as either a CE or PCE, and some will also require the preparation of a Section 4(f) Evaluation. The information presented in this section applies only to CEs and PCEs. See Section VI for information regarding Section 4(f) documentation.

A copy of the letter to and the response/concurrence on the project's effects from the MHT must be provided as evidence of compliance with Section 106.

If the MHT determines that the project will have an *adverse effect* on a historic resource the LG must consult with the MHT on ways to avoid, minimize, or mitigate these effects and to develop a Memorandum of Agreement (MOA) with the MHT, SHA and FHWA. Refer to Section VI for information regarding additional Section 4(f) requirements and documentation.

If an *adverse effect* is determined, the LG will draft a letter, on behalf of FHWA, addressed to the ACHP notifying them of the *adverse* determination. This letter will be sent to SHA first for comment and revisions, if necessary. SHA will then send the letter to FHWA asking that they notify the ACHP of the *adverse* determination. *The LG may not send a letter directly to the ACHP or FHWA*. A response from the ACHP is expected within 15 days of receipt of the letter from FHWA. If they decide to participate in resolving the adverse effect determination, they will become a signatory on the MOA.

If a MOA is required, it will be developed by the LG with guidance from MHT and SHA on format and content. The final MOA will be signed by the SHA Administrator, FHWA Division Administrator, the State Historic Preservation Officer, and the LG representative. The MOA should be sent either before or concurrently with the Categorical Exclusion. FHWA will transmit the fully executed MOA to the ACHP.

Trilogy Letters: US Fish and Wildlife Service (USFWS), Maryland Department of Natural Resources (DNR) – Wildlife and Heritage Service, and DNR-Integrated Policy and Review Unit

The LG must prepare letters requesting information regarding the presence of:

- RTE species or habitat
- Anadromous finfish species
- Time of year restrictions for instream work in the project area

These letters typically include a map of the project area and a description of the project. Sample copies of the trilogy letters are included in **Appendix N**.

The LG should use the USFWS online coordination tool found at http://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Index.html to determine if federally listed rare, threatened or endangered species are present within the project area. (See **Appendix N** for a tutorial on the online tool)

If there are documented species present within the immediate vicinity of the project area that are RTE or of special concern and could be affected by the project, the LG may be required to conduct a habitat assessment or species survey. Avoidance or mitigation may also be required. Copies of responses from the USFWS, DNR – Wildlife and Heritage Service, and DNR – Integrated Policy Review Unit, and any survey reports, must be provided as evidence of compliance. In addition, if the agencies request a survey, the results must be addressed as evidence of compliance.

Maryland Department of the Environment (MDE) and US Army Corps of Engineers (USACE)

The LG must determine if any wetlands, waterways, or floodplains are present, and if they will be impacted. If impacts are anticipated, the LG must coordinate with the MDE and the USACE to:

- Confirm field delineations
- Avoid or minimize impacts
- Obtain appropriate permits
- Prepare mitigation plans, if necessary

Issues with these agencies should be resolved before the environmental document is approved. A copy of the permit application and/or the issued permit must be provided as evidence of compliance.

If a project requires an individual USACE permit an environmental document may need to be prepared as part of the permit application. If federal funds are being used for the project, the environmental document preparation should be coordinated with SHA, on behalf of FHWA, so that one environmental document is prepared that will satisfy both USACE and FHWA requirements.

Critical Area Coordination

If the project impacts the Critical Area, which is defined as any area within 1,000 feet of tidal influence, the LG must coordinate with their local planning and zoning agency as appropriate to obtain necessary approvals. Often times impacts within the Critical Area result in additional mitigation than would normally be required. Copies of letters to and approvals from the local planning and zoning agency must be provided as evidence of compliance.

Public Involvement Coordination

The LG must provide proof of public involvement/outreach. While there is no requirement to hold a public hearing on projects processed as CEs or PCEs, there is a requirement to involve the public and to provide an opportunity for the public to comment on projects. There may also be a need to hold a community meeting when roadway detours are planned during construction. The requirements for public involvement/outreach are dependent on the project scope and potential for community impacts.

The LG must consult with the EM early in the concept development stage to determine what is appropriate and reasonable for the project. The EM must approve the public involvement/outreach concept. Some examples of public involvement/outreach include, but are not limited to: informal community meetings, flyers, and newspaper advertisements. Factors that will affect the requirements of the public involvement/outreach include, but are not limited to: project location, average daily traffic, length of the detour, and duration of the detour.

Flexibility is encouraged in determining public involvement strategies that are appropriate to the project and its potential impacts. The goal of involving the public is to assure no surprises to the public when construction begins. Public involvement activities should be documented in the environmental document. Copies of items such as meeting minutes, flyers, newspaper advertisements, etc. must be provided as evidence of compliance.

If the public has any concerns the LG should work to address their concerns.

Emergency Services and Public Buses

If a detour is required for the project, the LG must notify appropriate emergency service agencies. Emergency service agencies consist of:

- Fire and rescue (ambulatory) departments
- Police departments
- Public schools

In addition, the appropriate state or local agency (ex. MTA, WMATA, Ride On, etc.) should be notified if the project is located on a public bus route.

Copies of responses from the emergency service agencies must be provided as evidence of compliance.

If the emergency service, school bus, or public bus provider determines that the detour would adversely impact their response time or routes the LG should work to address their issues.

Section 6(f) of the LWCFA

Section 6(f) coordination may be required if there are also Section 4(f) impacts to publicly-owned public parks, recreational areas, or wildlife or waterfowl refugees. This coordination would be required if the impacted area within the resource received LWFCA funding for acquisition or development. If so, the impacts to the resource are also subject to separate requirements under Section 6(f).

Section 6(f) coordination requires approval from the Department of the Interior's (DOI) National Park Service (NPS) acting through the DNR. Generally, impacts to Section 6(f) lands must be replaced with land of equal

value, location and usefulness, and a written agreement with DNR outlining the mitigation must be included as proof of compliance. In some cases DNR may determine that very minor impacts may not require replacement land. Consequently, when dealing with Section 4(f) resources, it is crucial for the LG to identify the resource's funding sources. If park officials are unable to determine which portions of a park were purchased or improved with LWCFA funds, then the entire park may be subject to the requirements of Section 6(f). This determination is made by park officials. Similar requirements are also applicable if the affected resource was purchased or developed with State (DNR) Program Open Space money.

Air Quality

PM2.5

The LG must identify whether the project is:

(1) within a $PM_{2.5}$ nonattainment or maintenance area,
(2) exempt from review under 40 CFR 93.126 (Table 2- Exempt Projects) or 40 CFR 93.128 (Traffic Signal Synchronization Projects),
(3) not a project of air quality concern per 40 CFR 123(b)(1) or,
(4) a project of air quality concern per 40 CFR 123(b)(1).

(1) Nonattainment Areas

Project level (hotspot) $PM_{2.5}$ analysis is only required for projects that are partially or completely within a $PM_{2.5}$ nonattainment areas. These areas are:

- Washington DC-MD-VA
- District of Columbia
- MD – Charles Co., Frederick Co., Montgomery Co., Prince George's Co.
- VA – Alexandria, Arlington Co., Fairfax, Fairfax Co., Falls Church, Loudon Co., Manassas, Manassas Park, Prince William Co.
- Baltimore, MD
- Anne Arundel Co., Baltimore City, Baltimore Co., Carroll Co., Harford Co., Howard Co.
- Hagerstown-Martinsburg, MD-WV
- MD – Washington Co.
- WV –Berkeley Co.

(2) Exempt Projects

The LG must determine if a project falls under the "exempt project" category. These types of projects are listed in 40 CFR 93.126 and 40 CFR 93.128, and fall under the general categories of Safety, Air Quality, Other, and Traffic Signal Synchronization. The NEPA documentation will discuss the project and specify under which type of exempt project listed in 40 CFR 93.126 or 40 CFR 93.128 the proposed project falls.

(3) Projects Not of Air Quality Concern

Projects that are not of air quality concern for $PM_{2.5}$ are projects that do not meet the requirements of 40 CFR 93.123(b)(1) to be considered a project of air quality concern. In general these projects of air quality concern are projects that are:

- *New or expanded highway projects that have a significant number of or significant increase in diesel vehicles;*
- *Projects affecting intersections that are at Level-of-Service D, E, or F with a significant number of diesel vehicles, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes from a significant number of diesel vehicles related to the project;*
- *New bus and rail terminals and transfer points that have a significant number of diesel vehicles congregating at a single location;*
- *Expanded bus and rail terminals and transfer points that significantly increase the number of diesel vehicles congregating at a single location;*
- *Projects in or affecting locations, areas, or categories of sites which are identified in the PM10 or $PM_{2.5}$ applicable implementation plan or implementation plan submission, as appropriate, as sites of violation or possible violation.*

The LG will prepare documentation supporting the determination that the project is *not* of air quality concern for inclusion in the NEPA document.

However, once the LG has determined that a project is *inside* a non-attainment area, *not* an exempt project and *will have* air quality concerns the EM will provide the LG with direction on completing the appropriate analyses, coordination, and documentation. The EM will provide the LG detailed information on what needs to be included, who will review the information, and how long it will take to approve the conformity determination and the requirements for the public involvement.

Mobile Source Air Toxins (MSAT)

The FHWA has determined that some projects have no meaningful potential to incur MSAT effects and are therefore exempt from analysis.
The types of projects included in this category are:

- Projects qualifying as a categorical exclusion under 23 CFR 771.117(c);
- Projects exempt under the Clean Air Act conformity rule under 40 CFR 93.126; or
- Other projects with no meaningful impacts on traffic volumes or vehicle mix.

For projects that are categorically excluded under 23 CFR 771.117(c), or are exempt from conformity requirements under the Clean Air Act pursuant to 40 CFR 93.126, no analysis or discussion of MSAT is necessary. Documentation

sufficient to demonstrate that the project qualifies as a categorical exclusion and/or exempt project will suffice. For other projects with no or negligible traffic impacts, regardless of the class of NEPA environmental document, no MSAT analysis is required. However, the project record should document the basis for the determination of "no meaningful potential impacts" with a brief description of the factors considered. For projects that are not included under the above categories and that have the potential to incur MSAT effects, the EM will direct the LG on the type of analysis, coordination, and documentation that needs to be completed. **Note: The EM will advise the LG on the specific language needed in the environmental documentation for projects "exempt" and "non-exempt" from MSAT analyses.*

Planning Requirements for Project Approval:

Metropolitan Transportation Plan (MTP) Requirements:

For projects within a metropolitan area, the LG must determine whether the entire project is consistent with the appropriate Metropolitan Transportation Plan (MTP). The project, including all phases (i.e. PE, final design, ROW, etc), planned within the life of the transportation plan must be included in the fiscally constrained MTP *in order for FHWA to approve the final environmental document* (EIS, FONSI, CE). Should the project have construction phasing over an extended period of time, FHWA can *only* approve the environmental document for those segments of the project that have independent utility and logical termini, while contributing to the function of the overall project, and are included in the MPO's fiscally constrained MTP.

Statewide Long Range Transportation Plan (SLRT) Requirements:

The LG must determine that the project is consistent with the overall goals and objectives of the SLRT Plan (projects do not have to be specifically listed). FHWA can *not* approve an environmental document *unless* it is determined that the project within a rural area is consistent with the SLRT Plan.

STIP/TIP Requirements:

The LG must determine if the project is *regionally significant*. FHWA can *only* approve an environmental document for a *regionally significant* project if the proposed project or phases come from an approved, financially constrained STIP/TIP. The STIP/TIP must show the project and all phases of the project that are planned within the timeframe of the STIP/TIP. At least one subsequent phase of the project has to be included in the approved STIP/TIP before FHWA can approve the environmental document.

Conformity Requirements:

The LG must demonstrate that the project is part of a conforming MTP and TIP and meets all project level conformity requirements. FHWA can *not* approve an environmental document until conformity determination has been made and documented. For projects that are in nonattainment or maintenance

areas, the LG must demonstrate that the project is found to be in conformity based on the requirements found in 40 CFR 93.104(d).

Additional Coordination

Based on the project scope, the LG may be required to coordinate with additional agencies. Some examples of the need for additional coordination are if the scope includes items such as tree removal, hazardous waste removal, the non-applicability of Section 4(f), or the need for a US Coast Guard permit. The LG should contact the EM for information regarding additional coordination requirements specific to their project.

C. Draft of environmental documentation[2]

A typical CE includes the information stated below. A CE is a written summary of the existing conditions, proposed action, and environmental impacts of the project. See **Appendix G** for a sample CE. A typical PCE also includes the information stated below. However, the information is presented in a different format. See **Appendix H** for a sample PCE.

A draft is prepared after sufficient engineering and design has been completed in order to:

- Determine the level of environmental impacts
- Determine the types of permits and approvals required
- Undertake coordination with appropriate environmental resource agencies and permitting agencies
- Involve and coordinate with the public, as appropriate

Existing Conditions and Purpose/Need

The existing conditions and purpose/need section of the CE or PCE should provide a summary of the existing conditions of the project area. This section should also provide the purpose and need for the project. Typical information that is found in the existing conditions section includes, but is not limited to:

- Location of the project
- Description of the project area
- Type, length, and width of roadway and/or bridge
- Number and width of traffic lanes, sidewalks, shoulders, and medians
- Geometry of existing roadway and/or bridge and any inadequacies in the geometry
- Speed limit
- Average daily traffic (ADT)

[2] It is anticipated that all LG projects will be classified as either a CE or PCE, and some will also require the preparation of a Section 4(f) Evaluation. The information presented in this section applies only to CEs and PCEs. See Section VI for information regarding Section 4(f) documentation.

- Year the existing bridge was built and any prior modifications made to the bridge (if applicable)
- Bridge sufficiency rating (BSR) and any structural deficiencies (if applicable)

Proposed Action

The proposed action section of the CE or PCE should provide a detailed description of the project scope. The proposed action section should discuss the items listed below. Typical information that is found in the proposed action section includes, but is not limited to:

- Detailed description of the proposed project
- Type, length, and width of proposed roadway and/or bridge
- Number and width of traffic lanes, sidewalks, shoulders, and medians
- Changes to the horizontal and vertical alignments, or lack thereof
- Approach roadway improvements (if applicable)
- Additional work items (ex. traffic barriers, signing, drainage improvements, etc.)
- Detour, or lack thereof
- Emergency service coordination, if required

Environmental

The environmental section of the CE or PCE should discuss any environmental impacts, or lack thereof, and also summarize the results of the coordination with the environmental agencies. The following topic areas should be covered:

- Right-of-way requirements (by type: residential, commercial, individual, etc.) and the number of displacements
- Discussion of public involvement
- Impacts to historic or archeological resources
- Impacts to RTE
- Impacts to wetlands, waterways, or floodplains
- Impacts to the Critical Area
- Removal of existing trees
- Removal of hazardous waste
- Conformance with air quality and noise standards
- Conformance with TIP/STIP
- Impacts to publicly-owned public parks, recreation areas, or wildlife or waterfowl refuges
- Conformance with the Smart Growth Priority Funding Areas Act of 1997
- Cumulative and Secondary impacts
- Effects on minority or low-income populations
- Conformance with local and/or regional plans

It is equally important for the LG to note the lack of an environmental impact to a resource to assure SHA/FHWA that the environmental concern was appropriately considered.

Attachments

In order to provide evidence of compliance and to present a better overview of the project, the items listed below should be included as attachments to the CE or PCE.

- Location map
- Detour map (if required)
- Responses from the emergency service agencies (if required)
- Proof of public involvement (meeting minutes, flyers, newspaper ads, etc.)
- Response from the MHT providing concurrence of the project's effect
- Response from the USFWS (or online self-certification form)
- Response from the DNR-Wildlife and Heritage Service
- Response from the DNR-Policy Review Unit
- MDE permit application and/or the issued permit (if required)
- Approvals from the local planning and zoning agency in regards to Critical Area impacts (if required)

D. Review process

All reviews with the SHA Environmental Planning Division (EPLD) staff are completed electronically, unless otherwise requested by the LG. The LG must submit an electronic copy of the draft environmental document and a hard or electronic copy of all attachments to the EM. The EM will review the draft document for content and/or grammar and provide comments, electronically, to the LG. When the draft document is satisfactory, the EM will forward it to the remainder of the appropriate EPLD staff for a final SHA review, which will be completed within 30 days. The EM will supply the LG with the collective comments of the EPLD staff. The LG must then submit a final electronic copy to the EM as a check to make sure all comments have been addressed appropriately.

The EM will then give the LG permission to continue into the submittal process. It is the SHA's goal to complete only one review of the environmental document. However, this will depend on the quality of the LG's initial or subsequent submissions. SHA's goal is also to not make any new comments on subsequent revisions unless new information is provided and requires clarification.

Depending on the LG's ability to address the EM's and EPLD's comments, the total review process could take anywhere from one to six months. The LG can greatly reduce the review process time frame by following the templates that SHA provides as well as working closely with the EM to deal with any questions or problems that may arise. The EM will be available to answer questions and offer assistance as needed to complete the environmental documentation process. Additionally, if there

are project issues, SHA will take the lead in informal coordination with FHWA to resolve issues prior to the formal submittal of the environmental document.

E. Submission Process

PCE/SWPCEs

Upon completion of the review process, no further action is required by the LG. The EM will submit an official copy of the PCE/SWPCE, including all attachments.

CEs

Upon completion of the review process, the LG must submit an official copy of the CE text, including all attachments to the EM.

EA/EIS's When the decision has been made by the LG to prepare an EIS, the LG will prepare a Notice of Intent (NOI) (23 CFR 771.123/40 CFR 1508.22) for publication in the Federal Register. The LG should draft the NOI and send the draft to EPLD for review prior to submission to FHWA for publication in the Federal Register.

Upon completion of the engineering and environmental analyses, the LG will prepare the preliminary draft environmental document. The preliminary draft will be sent to EPLD for review and comment for a total of 15 days[3]. The LG will make the necessary revisions before sending the final draft to SHA for distribution to FHWA, cooperating agencies, and participating agencies. FHWA and the other agencies, if applicable, have 30 days to review and comment on the preliminary draft environmental document.

Based on the comments received from the agencies, the LG will revise the preliminary draft environmental document and will send the revised document with errata to EPLD for final review. The LG will prepare a letter transmitting the draft document to FHWA for approval. EPLD will send the final draft environmental document, errata, and transmittal letter to FHWA for approval.

A Notice of Availability (NOA) (for EIS's only) and advertisement for a public hearing, if applicable, will be published after FHWA's approval of the draft environmental document. A 30 day comment period for an EA or a 45 day comment period for an EIS will begin after the NOA. If a public hearing is required, the NOA must be made available for a minimum of 15 days prior to the scheduled public hearing date.

After review of the public comments and selection of the preferred alternative, the LG will prepare a preliminary version of the final environmental document. The preliminary final document will be sent to EPLD for review and comment for a period of 15 days. The LG will make the necessary

[3] Calendar days apply to all review times.

revisions before sending the preliminary final to SHA for distribution to FHWA, cooperating agencies, and participating agencies. For an EA, FHWA and the other agencies, if applicable, have 30 days to review and comment on the preliminary final environmental document. For an EIS or Section 4(f) Evaluation, FHWA has an additional 30 days for legal sufficiency review.

Based on the comments received from the agencies, the LG will revise the preliminary final environmental document and will send the revised document with errata to EPLD for final review. The LG will prepare a letter transmitting the final environmental document to FHWA for approval. EPLD will send the final environmental document, errata, and transmittal letter to FHWA for approval.

EPLD staff will provide guidance and direction on the submission process for EA's and EIS's.

F. Approval Process

PCE/SWPCEs

PCEs will be certified and signed by SHA's Division Chief of the Environmental Planning Division and copies will be distributed to all appropriate people. This process will generally be completed within one to two weeks. SWPCE's will be certified and signed by one of SHA's Assistant Division Chiefs of the Environmental Planning Division. *Note, EPLD Assistant Division Chiefs and Team Leaders may certify and sign a PCE or SWPCE, respectively, in the DC or ADCs absence.

CEs

Upon receipt of the CE, the EM will process the document for approval. CEs, including those with a Section 4(f) Evaluation, need to be forwarded to FHWA for comments and approval. SHA will attach a cover letter requesting FHWA's approval of the enclosed document and submit the document to FHWA. SHA is responsible for forwarding the document to FHWA. *LGs should not contact or submit materials to the FHWA directly.*

FHWA generally has 30 days to provide comments or approval. However, depending on the complexity of the project and other priorities that FHWA might have, this period could be extended beyond 30 days.

Upon completion of their review, FHWA will either provide approval or comments. If comments are provided, the LG will need to make the necessary revisions and resubmit to SHA. Oftentimes, revisions will require the LG to resubmit an updated copy of the document. The document is approved when FHWA signs it. At this point the document will be returned to SHA, where the EM will distribute it to all appropriate parties.

EA's/EIS's

Once the final document has been reviewed by all parties and comments have been addressed, EPLD will send the document, errata sheet, with the transmittal letter to FHWA for approval. FHWA has 30 days to review a Finding of No Significant Impact and 45 days for a final EIS's. After FHWA approves the final document, the appropriate number of copies will be distributed by the LG to the appropriate agencies.

If the final document is an EIS, then a preliminary Record of Decision (ROD) is sent to FHWA. The ROD presents the basis for the project decision, summarize any mitigation measures that will be incorporated in the project and documents any required Section 4(f) approval. The ROD cannot be signed sooner than 30 days after publication of the final EIS notice in the Federal Register or 90 days after publication of a notice for the draft EIS, whichever is later.

Once the CE, EA/FONSI, or EIS/ROD has been approved by FHWA or the PCE/SWPCE has been approved by SHA, the LG may proceed to the final design, right-of-way negotiation, and construction phases of the project.

EPLD staff will provide guidance and direction on the approval process for EA's and EIS's.

VI. Section 4(f) Documentation

If a federally funded LG project impacts a Section 4(f) resource, a Section 4(f) Evaluation will need to be completed. Impacts to Section 4(f) lands are considered a Section 4(f) use. This document is prepared by the LG, under the guidance of the EM, and must demonstrate that there are no prudent and feasible alternatives to avoid impacting the Section 4(f) resource. If impacts are unavoidable, the impacts must be minimized to the greatest extent possible and mitigation must be developed to offset the effect of the impacts. The types of uses that would require a Section 4(f) evaluation are:

- Fee-simple right-of-way acquisition
- Permanent or perpetual easements
- Temporary occupancy of land that is adverse in terms of its Section 4(f) preservation purposes
- Constructive uses
- Impairing the historic integrity of NRHP eligible bridges

The vast majority of LG projects involving Section 4(f) use will relate to fee-simple acquisition, permanent and perpetual easements or impairments to the historic integrity of NRHP eligible bridges.

The preferred alternative can impact Section 4(f) resources only if there is no feasible and prudent alternative to the use of the resource. If an avoidance alternative is determined to

be feasible and prudent it must be selected. An alternative could be determined not feasible and prudent for the following reasons:

- Does not meet purpose and need of the project
- Introduces severe operational or safety problems
- Requires additional unacceptable social, economic or environmental impacts
- Results in serious community disruption
- Adds extraordinary costs to the project
- A combination of the above

Depending on the significance of the impacts and the project scope, there are three ways of complying with the requirements of Section 4(f):

- Individual Section 4(f) Evaluations
- Programmatic Section 4(f) Evaluations
- *De minimis* Determinations

The level of effort and detail varies greatly between the three approaches, but generally, LG projects can be approved through Programmatic Section 4(f) Evaluations and *de minimis* determinations. All Section 4(f) Evaluations and determinations must be approved by FHWA, and are normally approved concurrently with the CE. Coordination with the EM will help the LG determine which Section 4(f) compliance method, if any, is appropriate for the project.

A. Individual Section 4(f) Evaluations

The requirements of individual Section 4(f) Evaluations require the preparation of Draft and Final Section 4(f) Evaluations and include a period (45 days) of selected regulatory and resource agency review between the draft and final documents.

Drafts of the Draft and Final Section 4(f) Evaluations will be reviewed by the EM before being submitted to FHWA for review, comment, and approval.

B. Programmatic Section 4(f) Evaluations

Minor impacts to Section 4(f) resources may qualify under the Programmatic Section 4(f) approach. This approach may be taken for minor impacts to historic sites or park, recreation areas, and wildlife or waterfowl refuges or for the impacts to historic bridges. This approach shortens the approval process by only requiring the preparation of one Section 4(f) document. However, the information and analyses contained therein are the same as in the Draft and Final Section 4(f) approach. EM will assist the LG in determining whether a project can be processed using a programmatic approach as there are certain criteria that FHWA has developed for determining this applicability.

All Programmatic Section 4(f) Evaluations will be completed using the streamlined format that has been developed. This format requires the LG to answer a series of questions in which they discuss the avoidance, minimization, mitigation, and enhancement measures taken to reduce the overall environmental impacts of the project.

Programmatic Section 4(f) Evaluations will be broken down into six sections. Each section requires the LG to answer several questions regarding the projects impacts to the Section 4(f) resource. The section format is the same for historic bridges as it is for publicly-owned public parks, recreation areas, and wildlife or waterfowl refuges, or historic sites; however, some of the questions in each section will be slightly different and tailored to the particular resource being impacted. A template of a Programmatic Section 4(f) Evaluation for historic bridges can be found in **Appendix J**, while a template of a Programmatic Section 4(f) Evaluation for publicly-owned public parks, recreation areas, and wildlife or waterfowl refugees, or historic sites can be found in **Appendix K**. Additionally, **Appendix L** provides an example of the appropriate wording that should be included in a CE letter if a Programmatic Section 4(f) Evaluation is required.

C. *De minimis* Findings

De minimis impacts to Section 4(f) lands are minimal (even less than Programmatic impacts) and have no adverse effect on the protected resource. When this is the case, and the responsible officials with jurisdiction over the resource agree in writing, compliance with Section 4(f) is greatly simplified. Once it is determined that the use of the Section 4(f) property results in a *de minimis* impact on that property, an analysis of avoidance alternatives is not required and the Section 4(f) evaluation process is complete. While formal avoidance analysis is not required in a *de minimis* finding, *de minimis* findings can be made after consideration of any impact avoidance, minimization, and mitigation or enhancement measures. It may be to the LG's benefit to produce some preliminary avoidance, minimization and mitigation plans to strengthen the *de minimis* argument.

De minimis determinations do not require the preparation of a separate document from the CE. The LG should include language in the CE to indicate their intent to seek a *de minimis* finding. The FHWA will approve the *de minimis* impact finding as part of the CE approval. See **Appendix L** for an example of the appropriate wording for a CE with *de minimis* determination.

The criteria for *de minimis* findings are different for historic sites than for parks, recreation areas, and wildlife or waterfowl refuges. The LG should contact the EM as soon as they establish their intent to seek a *de minimis* finding. Prior to requesting formal *de minimis* approval, the EP will present the project to FHWA to receive preliminary approval to request a *de minimis* determination. If FHWA does not believe the project would qualify for a *de minimis* determination, a Programmatic Section 4(f) Evaluation will need to be prepared.

Historic sites

In order to seek a *de minimis* finding for historic sites, the LG must receive a "no historic properties affected" or "no adverse effect" determination from the MHT in compliance with Section 106. Once the MHT provides the LG with the effect determination, the LG will need to recoordinate with the MHT and

other consulting parties in order to inform them of their intent to seek a *de minimis* impact finding. The letter to MHT must ask MHT to concur with the intent to request a *de minimis* finding from the FHWA. All "adverse effect" determinations must be completed through the Individual or Programmatic Section 4(f) approach.

Publicly-owned public parks, recreation areas, and wildlife or waterfowl refuges

De minimis findings for publicly-owned public parks, recreation areas, and wildlife or waterfowl refuges are defined as those that do not "adversely affect the activities, features and attributes" of the resource. This determination must come from the official with jurisdiction over the resource. To obtain this approval the LG will have to contact the official with jurisdiction, and notify them of the impacts and any proposed mitigation. The LG must receive a written response that the official is aware of the project and concurs with the *de minimis* finding. Additionally, the public must be afforded the opportunity to review and comment on the effects of the project on the protected activities, features and attributes of the Section 4(f) resource. Public involvement should be based on the specifics of the situation and commensurate with the type and location of the Section 4(f) resource, impacts and public interest. All methods of public involvement should be coordinated with the EM.

D. Non-Applicability of Section 4(f)

Temporary easements on Section 4(f) lands (parks, historic sites, etc.) are not subject to the requirements of Section 4(f) provided that certain criteria are complied with. This must be coordinated with EP and FHWA before a determination is made regarding the non-applicability of Section 4(f). The criteria for non-applicability of Section 4(f) for a temporary occupancy are:

- The duration (of the occupancy) will be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;
- The scope of work will be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) resource are minimal;
- There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purpose of the resource, on either a temporary or permanent basis;
- The land being used will be fully restored, i.e., the resource will be returned to a condition which is at least as good as that which existed prior to the project; and
- There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.

See **Appendix L** for an example of the appropriate wording for a CE with the non-applicability of Section 4(f) for temporary easements.

Appendix A:
Summary of the Relocation Assistance Program of the Maryland State Highway Administration

SUMMARY OF THE RELOCATION ASSISTANCE PROGRAM OF THE MARYLAND STATE HIGHWAY ADMINISTRATION

All State Highway Administration projects utilizing Federal funds must comply with the provisions of the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (42 USC 4601) as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), Public Law 105-117 in 1997, and Title 49 CFR Part 24 in 2005. State-funded projects must comply with Sections 12-112 and Subtitle 2, Sections 12-201 to 12-212, of the Real Property Article of the Annotated Code of Maryland.

The State Highway Administration's Office of Real Estate administers the Relocation Assistance Program for the Maryland Department of Transportation.

The aforementioned Federal and State laws require that the State Highway Administration provide relocation assistance payments and advisory services to eligible persons who are displaced by a public project. There are two categories of residential occupants: 180-day owner-occupants and 90-day tenants and short-term owner-occupants. Non-residential occupants may be businesses, farms or non-profit organizations.

A displaced person that has owned and occupied a subject dwelling for at least 180 days prior to the initiation of negotiations for the property may receive a replacement housing payment of up to $45,000. The replacement housing payment is composed of three parts: a purchase price differential; an increased mortgage interest differential; and reimbursement for incidental settlement expenses.

The purchase price differential is the difference between the value paid by the State Highway Administration for the existing dwelling and the cost to the displaced owner of a comparable replacement dwelling, as determined by the State's replacement housing study.

The increased mortgage interest differential is a payment made to the owner at the time of settlement on the replacement dwelling to negate the effects of less favorable financing in the new situation. The payment is calculated by use of the "buy-down" mortgage method.

Reimbursable incidental expenses are necessary and reasonable incidental costs that are incurred by the displaced person in purchasing a replacement dwelling, excluding pre-paid expenses such as real estate taxes and insurance. The maximum reimbursable amount for these incidental expenses is based upon the cost of the comparable selected in the replacement housing study.

A displaced person who has leased and occupied a subject dwelling for at least 90 days prior to the initiation of negotiations for the property may receive a replacement rental housing payment of up to $10,500. The replacement rental housing payment is the difference between

the monthly cost of housing for the subject dwelling, plus utilities, and the monthly cost of housing for a comparable replacement rental unit, plus utilities, over a period of 42 months. Owner-occupants of 90-179 days prior to the initiation of negotiations for the subject dwelling are eligible for the same replacement rental housing payments as tenants.

As an alternative to renting, a displaced tenant-occupant may elect to apply the rental replacement housing eligibility amount toward the down payment needed to purchase a replacement dwelling.

The comparable properties used in calculating any replacement housing payment eligibility must comply with all local standards for decent, safe and sanitary (DS&S) housing and be within the financial means of the displaced person.

If affordable, comparable DS&S replacement housing cannot be provided within the statutory maximums of $45,000 for 180-day owner-occupants or $10,500 for 90-day tenants or short-term owners, the maximums may be exceeded on a case-by-case basis. This may only be done after the completion and approval of a detailed study that documents the housing problem, explores the available replacement options and selects the most feasible and cost-effective alternative for implementation.

In addition, eligible displaced residential occupants may be reimbursed for the expense of moving personal property up to a maximum distance of fifty (50) miles, using either an actual cost or fixed schedule method.

Actual cost moves are based upon the lower of at least two commercial moving estimates and must be documented with receipted bills or invoices. Other incidental moving expenses, such as utility reconnection charges, may also be paid in the same manner.

As an alternative method, the fixed schedule move offers a lump sum, all-inclusive payment based upon the number of rooms to be moved. Other incidental costs are not separately reimbursable with this method.

Non-residential displaced persons such as businesses, farms or non-profit organizations may also receive reimbursement for the expense of relocating and re-establishing operations at a replacement site on either an actual cost or fixed payment basis.

Under the actual cost method, a non-residential displaced person may receive reimbursement for necessary and reasonable expenses for moving its personal property, the loss of tangible personal property that is not moved, the cost of searching for a replacement site and a re-establishment allowance of up to $60,000.

The actual reasonable moving expenses may be paid for a move by a commercial mover or for a self-move. Payments for the actual reasonable expenses are limited to a 50-mile radius unless the State determines a longer distance is necessary. The expenses claimed for actual cost moves must be supported by firm bids and receipted bills. An inventory of the items to be moved must be prepared in all cases. In self-moves, the State will negotiate an amount for

payment, usually lower than the lowest acceptable bid. The allowable expenses of a self-move may include amounts paid for equipment hired, the cost of using the business vehicles or equipment, wages paid to persons who participate in the move, the cost of actual supervision of the move, replacement insurance for the personal property moved, costs of licenses or permits required and other related expenses.

In addition to the actual moving expenses mentioned above, the displaced business is entitled to receive a payment for the actual direct losses of tangible personal property that the business is entitled to relocate but elects not to move. These payments may only be made after an effort by the owner to sell the personal property involved. The costs of the sale are also reimbursable moving expenses.

If the business elects not to move or to discontinue the use of an item, the payment shall consist of the lesser of: the fair market value of the item for continued use at the displacement site, less the proceeds from its sale; or the estimated cost of moving the item.

If an item of personal property which is used as part of a business or farm operation is not moved and is promptly replaced with a substitute item that performs a comparable function at the replacement site, payment shall be the lesser of: the cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or the estimated cost of moving and reinstalling the replaced item.

In addition to the moving payments described above, a business may be eligible for a payment up to $10,000 for the actual reasonable and necessary expenses of re-establishing at the replacement site. Generally, re-establishment expenses include certain repairs and improvements to the replacement site, increased operating costs, exterior signing, advertising the replacement location, and other fees paid to re-establish. Receipted bills and other evidence of these expenses are required for payment. The total maximum re-establishment payment eligibility is $60,000.

In lieu of all moving payments described above, a business may elect to receive a fixed payment equal to the average annual net earnings of the business. This payment shall not be less than $1,000 nor more than $60,000. In order to be entitled to this payment, the State must determine that the business cannot be relocated without a substantial loss of its existing patronage; the business is not part of a commercial enterprise having more than three other establishments in the same or similar business that are not being acquired; and the business contributes materially to the income of a displaced owner during the two taxable years prior to the year of the displacement. A business operated at the displacement site solely for the purpose of renting to others is not eligible. Considerations in the State's determination of loss of existing patronage are the type of business conducted by the displaced business and the nature of the clientele. The relative importance of the present and proposed locations to the displaced business and the availability of suitable replacement sites are also factors.

In order to determine the amount of the "in lieu of" moving expense payment, the average annual net earnings of the business is to be one-half of the net earnings before taxes during the two taxable years immediately preceding the taxable year in which the business is relocated. If the two taxable years are not representative, the State may use another two-year

period that would be more representative. Average annual net earnings include any compensation paid by the business to the owner, owner's spouse, or dependents during the period. Should a business be in operation less than two years, the owner of the business may still be eligible to receive the "in lieu of" payment. In all cases, the owner of the business must provide information to support its net earnings, such as income tax returns, or certified financial statements, for the tax years in question.

Displaced farms and non-profit organizations are also eligible for actual reasonable moving costs up to 50 miles, actual direct losses of tangible personal property, search costs up to $2,500 and re-establishment expenses up to $60,000 or a fixed payment "in lieu of" actual moving expenses of $1,000 to $60,000. The State may determine that a displaced farm may be paid a minimum of $1,000 to a maximum of $60,000 based upon the net income of the farm, provided that the farm has been relocated or the partial acquisition caused a substantial change in the nature of the farm. In some cases, payments "in lieu of" actual moving costs may be made to farm operations that are affected by a partial acquisition. A non-profit organization is eligible to receive a fixed payment or an "in lieu of" actual moving cost payment, in the amount of $1,000 to $60,000 based on gross annual revenues less administrative expenses.

A more detailed explanation of the benefits and payments available to displaced persons, businesses, farms and non-profit organizations is available in the brochure entitled, "Relocation Assistance – Your Rights and Benefits," that will be distributed at the public hearing for this project and be given to all displaced persons.

Federal and State laws require that the State Highway Administration shall not proceed with any phase of a project which will cause the relocation of any persons, or proceed with any construction project, until it has furnished satisfactory assurances that the above payments will be provided, and that all displaced persons will be satisfactorily relocated to comparable decent, safe and sanitary housing within their financial means, or that such housing is in place and has been made available to the displaced persons.

In addition, the requirements of Public Law 105-117 provides that a person who is an alien and is not lawfully present in the United States shall not be eligible for relocation payments or other assistance under the Uniform Act. It also directed all State displacing agencies that utilize Federal funds in their projects to implement procedures for compliance with this law in order to safeguard that funding. To this end, displaced persons will be asked to certify to their citizenship or alien status prior to receiving payments or other benefits under the Relocation Assistance Program.

Appendix B: Environmental Documentation Process Checklist

Environmental Documentation Process Checklist

Project No. _____

Project Limits _____

SHA EM _____

1. Project Initiation

- Submit Form 25c _____
- Submit Project Location Map _____
- Submit Existing Environmental Documentation _____
- Submit LG Contact Information _____
- LG contacted by SHA EM _____

2. Environmental Coordination (Dates)

- Maryland Historical Trust: Request _____ Response _____ Copy to SHA _____
- "Trilogy Letters"

-USFWS Request _____ Response _____ Copy to SHA _____

-DNR (Wildlife & Heritage) Request _____ - Response _____ Copy to SHA _____

DNR (Policy Review Unit) Request _____ Response _____ Copy to SHA _____

- Additional Agencies

-_____ Request _____ Response _____ Copy to SHA _____

-_____ Request _____ Response _____ Copy to SHA _____

-_____ Request _____ Response _____ Copy to SHA _____

-_____ Request _____ Response _____ Copy to SHA _____

-_____ Request _____ Response _____ Copy to SHA _____

-_____ Request _____ Response _____ Copy to SHA _____

3. Environmental Documentation

- PCE for PE: _____
- Determine Appropriate Document: CE _____ PCE _____
- Draft Document

Existing Conditions

Location	_____	Purpose and Need	_____
Description of Area	_____	Typical Sections	_____
Average Daily Traffic	_____	Speed Limit	_____
Year Built*	_____	Sufficiency Rating*	_____
Type of Bridge*	_____	Repair History*	_____

Proposed Action

Description	_____	Typical Sections	_____
Detour Route	_____	Emergency Services	_____

Environmental**

MHT	_____	RTE Species	_____
Wetlands/Waterways	_____	Floodplains	_____
Critical Area	_____	Air & Noise	_____
Smart Growth	_____	Secondary Impacts	_____
Section 4(f)	_____	Public Involvement	_____
Right-of-way	_____	Tree Removal	_____
Hazardous Waste	_____	Low-income/Minority	_____
Local/Regional Plans	_____	TIP/STIP	_____

Attachments***

Location Map	_____	Detour Map	_____
MHT Coordination	_____	Emergency Services	_____
“Trilogy Letters”	_____	Critical Area Letter	_____
Public Involvement	_____	MDE Permit	_____
Section 4(f)	_____	MOA	_____
Species Survey	_____	Tree Permit	_____

* For bridge projects only
** Impacts to these resources, or lack of impacts, should be discussed in every document
*** Not all attachments will be needed for every project

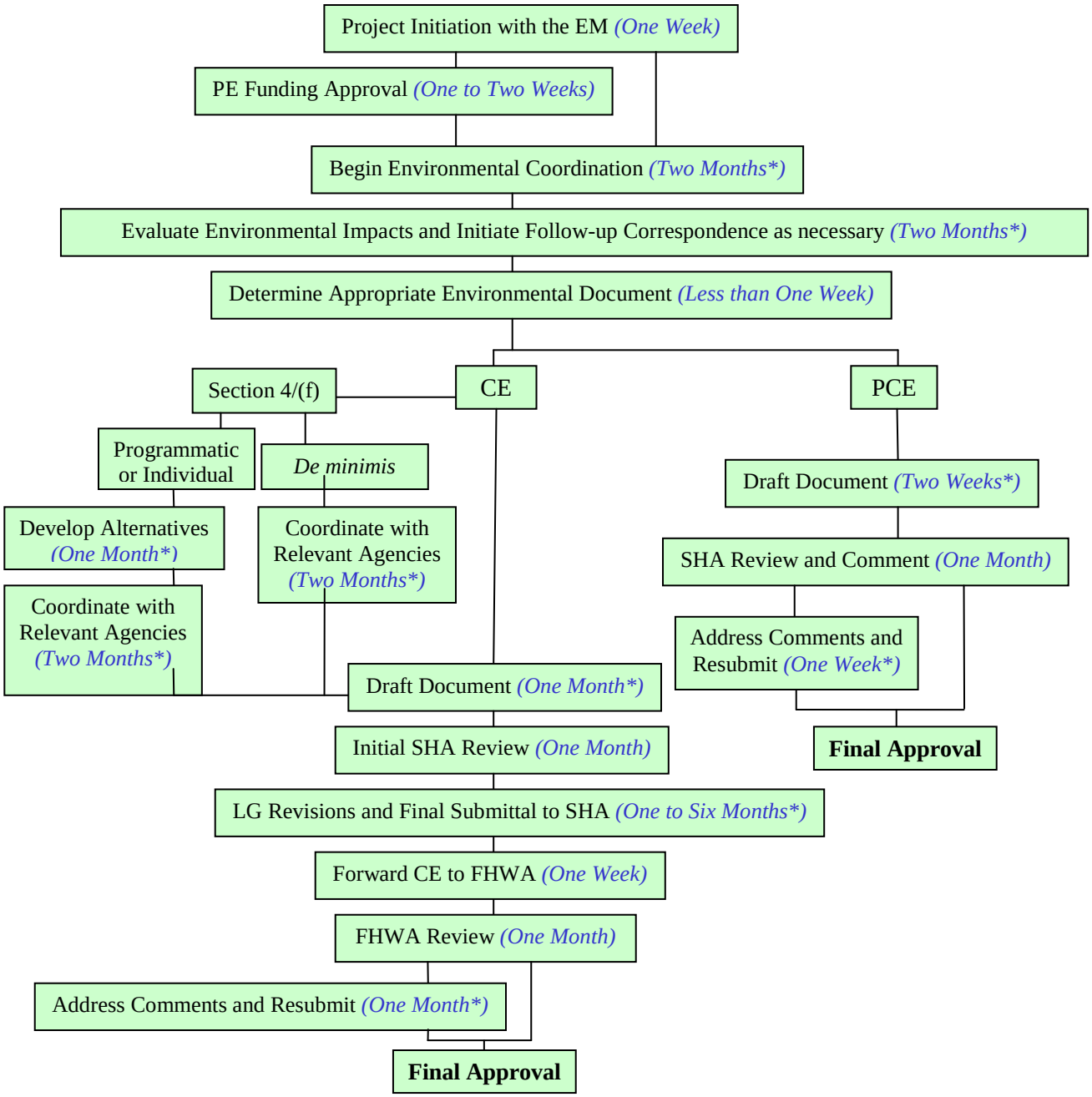
4. Review, Submission and Approval Process

- Submit Draft Document with Attachments to EPLD _____
- Receive Comments from EPLD _____
- Address Comments and Resubmit _____
- Submit Final Copy to FAPS^ _____
- Document Submitted to FHWA by SHA^ _____
- Address FHWA Comments and Resubmit^ _____
- Final Document Approval and Circulation _____

^ For CEs only

Appendix C: Environmental Documentation Process Flowchart

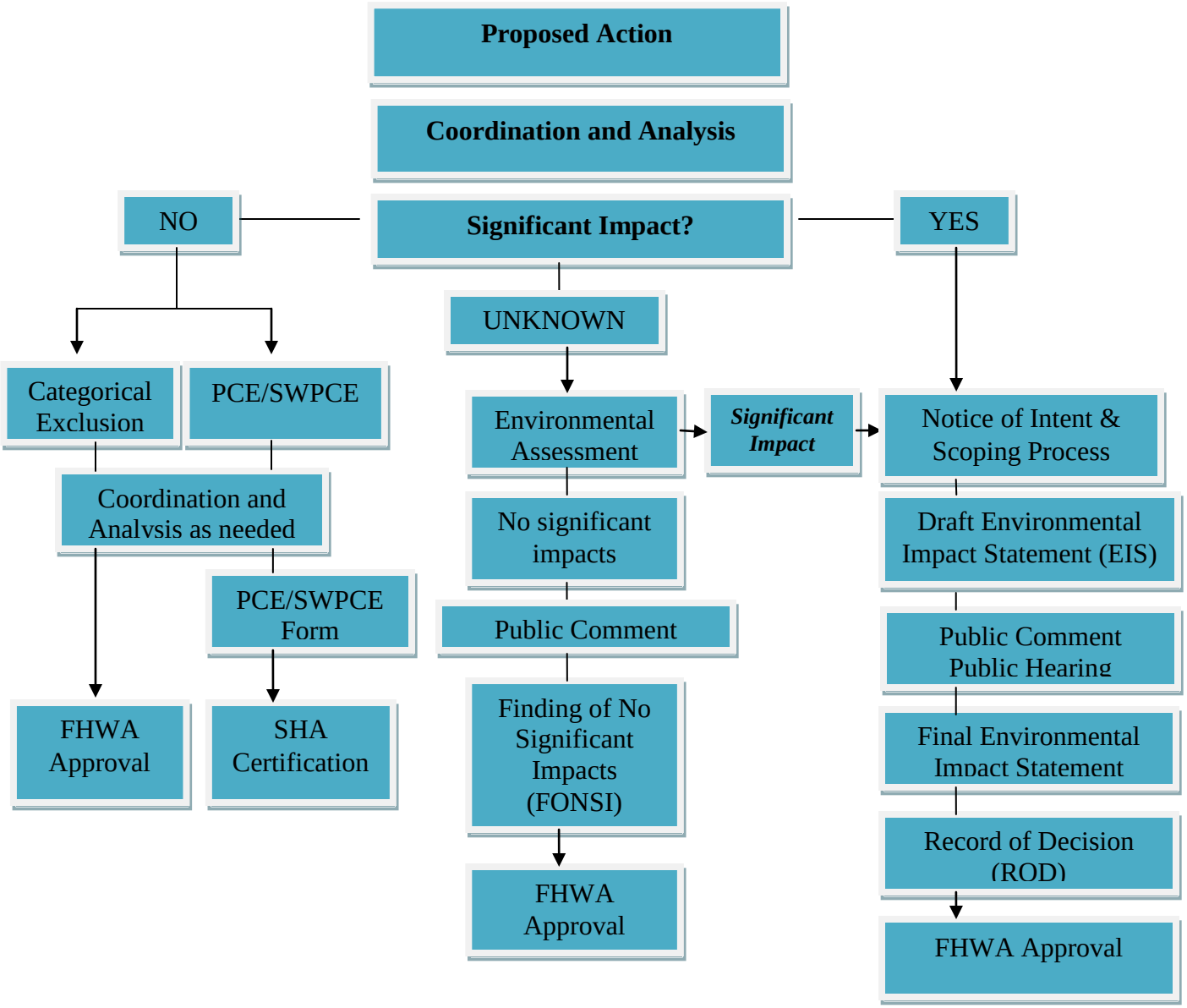
PCE/CE Environmental Documentation Process for Federal Funded LG Projects



*These times are the responsibility of the LG and agencies other than SHA.

Note: All times are approximate and may change depending on project scope, environmental impacts, and the project's priority level for the LG.

NEPA Processing Options for Federal Funded LG Projects



Appendix D: Useful Internet References

Internet Resources

Legislation:

42 U.S.C. 4321-4347
National Environmental Policy Act (NEPA)
http://ceq.eh.doe.gov/nepa/regs/nepa/nepaeqia.htm

23 U.S.C.
Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)
http://www.fhwa.dot.gov/safetealu/reference.htm

Selected SAFETEA-LU Provisions:

- 1503: Design Build
- 1805: Use of debris from demolished bridges and overpasses
- 1904: Major Projects
- 6001: Transportation Planning
- 6002: Efficient Environmental Reviews for Project Decision-making
- 6004: State Assumption of Responsibility for Categorical Exclusions
- 6005: Surface Transportation Project Delivery and Pilot Program
- 6006: Environmental restoration and pollution abatement; control of noxious weeds and establishment of native species
- 6007: Exemption of Interstate System
- 6009: Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites
- 6010: Environmental Review of Activities that Support Deployment of Intelligent Transportation Systems
- 6011: Transportation Conformity

Regulations:

40 CFR Part 1500-1508
CEQ Regulations for Implementing NEPA
http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm

23 CFR 771
FHWA- Environmental Impacts and Related Procedures
http://environment.fhwa.dot.gov/projdev/imp771pream.asp

Policy and Guidance:

FHWA Environmental Guidebook
http://environment.fhwa.dot.gov/guidebook/index.asp

40 Most Asked Questions Concerning CEQ's NEPA Regulations
http://ceq.eh.doe.gov/nepa/regs/40/40p3.htm

CEQ Guidance
http://ceq.eh.doe.gov/nepa/regs/guidance.html

T6640.8A: Technical Advisory
http://environment.fhwa.dot.gov/projdev/impTA6640.asp

Re: NEPA
http://nepa.fhwa.dot.gov/ReNepa/ReNepa.nsf/home

Section 4(f) Policy Paper, 3/1/2005
http://environment.fhwa.dot.gov/projdev/4fpolicy.asp

SAFETEA-LU
http://www.fhwa.dot.gov/safetealu/

FHWA Policy on Permissible Project Related Activities During the NEPA Process
http://www.fhwa.dot.gov/legsregs/directives/orders/66401a.htm

Additional Resources:

FHWA Environmental Guidebook
http://environment.fhwa.dot.gov/guidebook/index.asp

FHWA Environmental Review Toolkit
http://environment.fhwa.dot.gov/index.asp

Environmental Competency Building Program
http://environment.fhwa.dot.gov/ecb/index.asp

Agencies:

Federal Highway Administration (FHWA)
http://www.fhwa.dot.gov/environment/index.htm

Council on Environmental Quality (CEQ)
http://www.whitehouse.gov/ceq/

Environmental Protection Agency (EPA)
http://www.epa.gov/

US Army Corps of Engineers (ACOE)
http://www.usace.army.mil/

US Fish and Wildlife Service (USFWS)
http://www.fws.gov/
http://www.fws.gov/chesapeakebay/EndSppWeb/ELEMENTS/listreq.html

Advisory Council on Historic Preservation (ACHP)
http://www.achp.gov/

National Park Service (NPS)
http://www.nps.gov/

US Coast Guard (USCG)
http://www.uscg.mil/USCG.shtm

US Forest Service (USFS)
http://www.fs.fed.us/

Training:

National Highway Institute (NHI)
http://www.nhi.fhwa.dot.gov/

USFWS National Conservation Training Center
http://training.fws.gov

CEQ's Compendium of NEPA Training
http://ceq.eh.doe.gov/nepa/training/NEPAcourselist.pdf

American Association of State Highway and Transportation Officials (AASHTO):
Center for Environmental Excellence
http://environment.transportation.org/

Transportation Bill:

MAP-21 (Moving Ahead for Progress in the 21st Century)
http://www.fhwa.dot.gov/map21

TAP (Transportation Alternatives Program)
http://www.fhwa.dot.gov/map21/guidance/guidetap.cfm

Appendix E: Agency Contact Information

SHA Contacts:

SHA Headquarters

707 N. Calvert Street
Baltimore, Maryland 21201

Environmental Planning Division (EPLD)

Donald Sparklin, Division Chief, 410-545-8564, dsparklin@sha.state.md.us
Dennis Atkins, Assistant Division Chief, 410-545-8520, datkins@sha.state.md.us
Joseph Kresslein, Assistant Division Chief, 410-545-8550, jkresslein@sha.state.md.us

Deb Sward, Environmental Manager, (Montgomery, Prince George's, Cecil, Kent, Queen Anne's, Caroline, Talbot, Somerset, Dorchester, Worcester, and Wicomico) 410-545-8916, dsward@sha.state.md.us

Brandi McCoy, Environmental Manager, (Harford, Baltimore, Anne Arundel, Calvert, St. Mary's and Charles) 410-545-8697, bmccoy@sha.state.md.us

Caryn Brookman, Environmental Manager, (Garrett, Allegany, Washington, Frederick, Carroll, and Howard) 410-545-8698, cbrookman@sha.state.md.us

Kristi Hewlett, Environmental Manager, (Baltimore City) 410-545-7371, khewlett@sha.state.md.us

Federal Aid Programming Section

Guy Talerico, Chief, 410-545-5780, gtalerico@sha.state.md.us
Elizabeth Wright, 410-545-5774, ewright@sha.state.md.us

Office of Structures- Federal Aid Bridge Program

Ralph Manna, Assistant Division Chief, 410-545-8333, rmanna@sha.state.md.us

FHWA Contacts:

Maryland Division Office

10 S. Howard
Suite 2450
Baltimore, MD 21201

Ms. Jeanette Mar, Environmental Program Manager, 410-779-7152, Jeanette.mar@dot.gov
Ms. Joy Liang, Environmental Specialist, 410-779-7148, joy.liang@dot.gov
Mr. Jitesh Parikh, Project Delivery Team Leader, 410-779-7136, jitesh.parikh@dot.gov

Resource Agency Contacts:

Maryland Historical Trust (MHT)

Ms. Elizabeth Hughes, State Historic Preservation Officer
100 Community Place
3rd Floor
Crownsville, Maryland 21032

Beth Cole, Administrator-Project Reviews, 410-514-7631, beth.cole@maryland.gov
Tim Tamburrino, Preservation Officer/Transportation Reviewer, 410-514-7637, tim.tamburrino@maryland.gov

Maryland Department of Natural Resources

580 Taylor Avenue
Tawes State Office Building
Annapolis, MD 21401

Wildlife and Heritage Service
Lori Byrne, Environmental Review Coordinator, 410-260-8573, lbyrne@dnr.state.md.us

Integrated Policy and Review Unit
Martha Stauss, Project Review Division, 410-260-8312, environmentalreview.dnr@maryland.gov

US Fish and Wildlife Service

Chesapeake Bay Field Office
U.S. Fish & Wildlife Service
177 Admiral Cochrane Drive
Annapolis, MD 21401
410-573-4599

(Use online tool to complete coordination, Link: http://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Index.html)

Maryland Department of Environment

1800 Washington Blvd
Baltimore, MD 21230

Ms. Amanda Sigillito, Division Chief
Non-tidal Wetlands Division
Amanda.sigillito@maryland.gov
(410) 537-3766

Mr. Robert Tabisz, Division Chief
Tidal Wetlands Division
robert.tabisz@maryland.gov
(410) 537-3838

Army Corps of Engineers (Baltimore District)

City Crescent Building
10 South Howard Street
Baltimore, MD 21201
1-800-434-0988 (General)
410-962-3670 (Wetlands/Regulatory Permits)

Appendix F: National Environmental Policy Act of 1969, as amended

The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose

Sec. 2 [42 USC § 4321].

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102 [42 USC § 4332].

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop

and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 USC § 4333].

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any

deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC § 4334].

Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 USC § 4335].

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201 [42 USC § 4341].

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban an rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 USC § 4342].

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC § 4343].

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204 [42 USC § 4344].

It shall be the duty and function of the Council --

1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;
2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;
3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;
4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;
5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;
7. to report at least once each year to the President on the state and condition of the environment; and
8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205 [42 USC § 4345].

In exercising its powers, functions, and duties under this Act, the Council shall --

1. consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and
2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will

not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206 [42 USC § 4346].

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

Sec. 207 [42 USC § 4346a].

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208 [42 USC § 4346b].

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 USC § 4347].

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

The Environmental Quality Improvement Act, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

42 USC § 4372.

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions ;under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no

such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by --

1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;
2. assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;
3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;
4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;
5. assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;
6. assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;
7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC § 4373. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

42 USC § 4374. There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

(a) $2,126,000 for the fiscal year ending September 30, 1979.

(b) $3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.

(c) $44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) $480,000 for each of the fiscal years ending September 30, 1985 and 1986.

42 USC § 4375.

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --

1. study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and
2. Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.
(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

Appendix G: Sample CE

SAMPLE CE

Categorical Exclusion
Alphabet Road over Number Branch
Replacement of Bridge No. 123
Franklin County, Maryland

This request for environmental classification concerns the proposed replacement of Bridge No. 123 along Alphabet Road over Number Branch in Franklin County. It details that no significant environmental impacts to socioeconomic, natural or cultural resources will occur as a result of this project.

Existing Conditions

The proposed scope of work involves the removal and replacement of Bridge No. 123 on Alphabet Road over Number Branch located Franklin County, Maryland **(Attachment 1)**. Alphabet Road is a five-mile local minor collector road consisting of two 11-foot lanes and two three-foot shoulders. The road runs northerly from MD 999 to the crossing of Number Branch, which is located near a sharp curve in the roadway, and continues in an easterly direction to the intersection with MD 000. The average daily traffic, recorded in 2006, was 700 vehicles per day, and the posted speed limit along Alphabet Road is 30 miles per hour with a significant reduction in speed required at the bridge.

Bridge No. 123, built in 1948, is an 80-foot single-span, closed spandrel, concrete rib arch bridge. The superstructure consists of two two-inch wide reinforced concrete rib arches that support a ten-inch reinforced concrete deck slab. The structure has an out-to-out width of 24 feet and carries a clear roadway of 22 feet. The bridge is striped for two 11-foot lanes and no shoulders are delineated. The traffic barrier system consists of a one-foot wide concrete parapet on each side of the bridge.

Bridge No. 123 is structurally deficient with a sufficiency rating of 25.4. There is also a weight restriction rating of 14,000 pounds for a single vehicle and 25,000 pounds for a combination vehicle. No major repairs have been made to the existing bridge. The 2005 Bridge Inspection Report recommended replacement of the bridge due to inadequate load carrying capacity and critical distress in the main load carrying members.

Proposed Action

The proposed structure will be a simple-span, prestressed concrete girder bridge with a span length of 85 feet. The proposed bridge will carry two 11-foot lanes of traffic and two three-foot shoulders providing a total clear roadway width of 28 feet in compliance with the minimum AASHTO requirements. A one-foot wide concrete parapet will be located on each side of the bridge and the out-to-out width will be 31 feet. The proposed structure will be realigned slightly to the west and raised approximately one foot above the existing elevation to improve the roadway alignment and to ensure that Alphabet Road is passable in a 100-year storm event.

Approach roadway improvements will also be completed at an approximate distance of 300 feet along the west approach and 150 feet along the east approach to transition the proposed bridge into the existing roadway. This work will include full depth roadway reconstruction, installation of a new traffic barrier that meets current standards, and drainage improvements.

Replacement of the bridge will require the use of a detour. The road will be closed to all through traffic during construction of the bridge for approximately six months. Local traffic may encounter a two-mile detour. The detour includes travel from MD 999, via Alphabet Road, to MD 000 and from MD 000, via Alphabet Road, to MD 999, as shown on the detour plan **(Attachment 2)**. Written correspondence with the Franklin County Fire & Rescue Department, Franklin County Sheriff's Office, and Maryland State Police resulted in no negative responses in respect to the proposed bridge closure and detour plan **(Attachment 3)**. The Franklin County Board of Education indicated that approximately ten students from both the east and west sides of the bridge will be impacted by the detour. Franklin County has coordinated with two local residents and has received approval from residents to use private driveways as a turnaround for the buses. The Franklin County Board of Education has approved this resolution (**Attachment 4**).

Environmental

The replacement of the existing bridge and widening of approach roadways will require the acquisition of additional right-of-way by Franklin County. The realignment of the existing roadway will extend outside the existing right-of-way, thus requiring a total of 0.24 acre of fee simple right-of-way. Additionally, 0.16 acre in temporary construction easement is required for the temporary stream diversion layout and contractor access during construction. All areas will be obtained from two private property owners. The limit of right-of-way required for this project was determined by the distance from the centerline of the roadway required to fit the new bridge and roadway reconstruction. Franklin County will acquire all right-of-way and obtain the required right-of-entry agreements following approval of the CE classification request from the Federal Highway Administration and prior to commencing with construction activities.

On June 1, 2006 the County held an informal community meeting to discuss the purpose and need of the project, to explain the proposed road closure, and to receive public comments **(Attachment 4)**. Eight residents who live off Alphabet Road attended the meeting; however, notification letters were sent to all of the local property owners and were posted throughout the community and in the County newspaper. At this meeting, the residents did not communicate concern about the proposed detour and upon review of the plans and discussion with the Franklin County, the residents were satisfied with the proposed project. The County will also post a sign at the bridge two weeks in advance of the road closure to notify the public of the construction.

On March 1, 2005, the Maryland Historical Trust (MHT) concurred that no historic properties will be affected by the proposed work **(Attachment 5)**. Although the bridge is included on the Maryland Inventory of Historic Bridges, the MHT concurred that the existing bridge is not eligible for listing on the National Register of Historic Places.

According to the U.S. Department of the Interior, Fish and Wildlife Service, the federally threatened bog turtle (*Clemmys muhlenbergii*) may be present within the project area **(Attachment 6)**. They indicated that a survey for bog turtle habitat and bog turtles should be conducted at any location where the Wildlife and Heritage Service of the Maryland Department of Natural Resources (DNR) recommends. On November 1, 2005 the project area was inspected for wetlands and bog turtle habitat determinations. The inspection indicated that the bog turtle habitat does not occur within the project limits (**Attachment 7**). In addition, except for occasional transient individuals, no other federally proposed or listed endangered or threatened species are known to exist within the project area. The Wildlife and Heritage Service of the DNR has no records for federal or state rare, threatened, or endangered species within the project area **(Attachment 8)**. However, they indicated that there is a record for the state listed Sessile-leaved Tick-trefoil (*Desmodium sessifolium*) known to occur within the vicinity of the project area. A habitat evaluation was performed for the species of concern. The existing habitat observed indicated poor habitat for the species of concern. The Wildlife and Heritage Service accepted the results of the habitat assessment and have no further concerns (**Attachment 9**).

The Wildlife and Heritage Service also indicated that the forested area on or adjacent to the project area contains Forest Interior Dwelling Bird Species (FIDS), which are declining in Maryland and throughout the eastern United States. The DNR strongly encourages the conservation of FIDS habitat by following guidelines such as: avoiding placement of new roads or related construction within the forest interior; avoiding removal or disturbance of forest habitat during the breeding season (May through August); maintaining forest habitat as close as possible to the road; maintaining canopy closure where possible; and maintaining grass height at least ten inches during the breeding season (May through August). FIDS habitat would likely not be affected, as the proposed work only impacts minor forested areas along the edge of the existing roadway.

According to the Environmental Review Unit of the DNR, Number Branch is a Use I Stream (Water Contact Recreation and Protection of Aquatic Life) with no in-stream work permitted between March 1 and June 15, inclusive, during any year. The DNR's Fisheries Service has not documented anadromous fish species in Number Branch. However, the stream could support many resident fish populations documented by the Maryland Biological Stream Survey Program within the Number River Basin. These species will be adequately protected by the instream work prohibition period, proper erosion and sediment control measures and other Best Management Practices typically used for the protection of stream resources **(Attachment 10)**.

The proposed project lies entirely within the Chesapeake Bay Critical Area Resource Conservation Area and, therefore, requires mitigation for all permanent impacts to Waters of the U.S., including wetlands. The project will result in an increase in impervious surface and other disturbance within the 100-foot buffer of the Critical Area. Per Critical Area regulations, the new impervious surface and buffer disturbance shall be mitigated by planting trees at a 3:1 ratio for buffer disturbance on the northwest side of the bridge. Additionally, the County proposes to reforest a 15,000 square foot site within the Critical Area adjacent to the Hole in One Golf Course in Franktown, MD. The Franklin County Department of Planning and Zoning has determined that the project is consistent with the local Critical Area program (**Attachment 11**).

The project crosses the 100-year floodplain of Number Branch. The proposed work will result in permanent impacts to 450 square feet of tidal emergent wetlands and 2,000 square feet of tidal waters. The project will also temporarily impact approximately 1,000 square feet of Waters of the US. The impacts to waters and wetlands are a direct result of the placement of stream diversions and for bridge construction. Measures will be taken during construction to minimize water quality impacts to the existing stream. These measures include restricting the contractor's access to the stream, installing appropriate erosion and sediment controls, and restricting construction during environmentally sensitive times. A Joint Federal/State Application for the Alteration of any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland has been filed with the Maryland Department of Environment (MDE) **(Attachment 12)**.

Approximately five trees over 12 inches in diameter will be removed to accommodate the alignment shift of the existing roadway. Franklin County has submitted an application to the DNR for a Roadside Tree Permit (**Attachment 13**). The permit will be received prior to advertisement of the project.

Air and noise analyses are not warrnated since the proposed project does not result in any capacity improvements. This project is identified in the current STIP (STIP A27-4). This project is exempt from the requirement that a conformity determination be made (U.S. EPA Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans, Programs or Projects-Final Rule).

The purpose of this project is to replace Bridge No. 123 in-kind. This project will not result in any meaningful changes in traffic volumes, vehicular mix, location of the existing facility, or any other factor that would cause an increase in emissions impacts relative to the no-build alternative. As such, this project will generate minimal air quality impacts for the Clean Air Act criteria pollutants and has not been linked with any special Mobile Source Air Toxics (MSAT) concern. Consequently, this project is exempt from an analysis for MSATs.

Moreover, EPA regulations for vehicle engines and fuels will cause overall MSATs to decline significantly over the next 20 years. Even after accounting for a 64 percent increase in VMT, FHWA predicts MSATs will decline in the range of 57 precent to 87 precent, from 2000 to 2020, based on regulations now in effect, even with a projects 64 precent increase in VMT. This will both reduce the background level of MSATs as well as the possibility of even minor MSAT emissions from this project.

Projects which are exempt from project level conformity are also exempt from the PM2.5 project level conformity determination requirements, in accordance with 40 CFR 93.126. Exempt projects are listed in 40 CFR 93.126 in Table 2 and this project is an example of Safety - Reconstructing Bridges (no additional travel lanes) projects in that table. This project will improve traffic safety but will not increase capacity.

No displacements are required and no right-of-way would be required from any publicly-owned public park, recreation area, wildlife or waterfowl refuge or historic resource. The project will not occur within a Priority Funding Area, as defined under the Smart Growth Priority Funding

Areas Act of 1997. However, this project is a system preservation and safety project and, as such, is not subject to the restrictions of the Smart Growth Priority Funding Areas Act.

The proposed project will not provide new access to any new or planned development areas. Therefore, secondary impacts are not anticipated as a result of this project. No disproportionately high or adverse effects on minority or low-income populations will occur as a result of this project. The project is not inconsistent with the Franklin County 2000 Master Plan.

Appendix H: PCE Template

SHA can provide template

Appendix I: Re-evaluation Template

SHA can provide template

Appendix J: Programmatic Section 4(f) Evaluation for Historic Bridges

Programmatic Section 4(f) Evaluation for Historic Bridges

- *Project applicability*
  All projects impacting significant historic bridges resulting in an adverse effect determination by the MHT will require a Programmatic Section 4(f) Evaluation. Projects resulting in the replacement or rehabilitation of a historic bridge (that is, on or eligible for the NRHP and where the historic integrity of the bridge is not maintained) are examples of when Section 4(f) would apply.

- *Alternatives*
  LGs are required to develop at least three alternatives under Section 4(f). For bridge projects, the alternatives required include:
  - Do nothing or no build
  - Build a new structure at different location while preserving the historic integrity of the existing bridge
  - Rehabilitate the existing bridge without affecting the historic integrity of the structure

  As part of the Section 4(f) alternatives analysis, historic bridges must be marketed for alternative uses, although successful marketing and relocation of a bridge while retaining historic integrity does not require Section 4(f) analyses.

- *Measures to minimize harm*
  "Adverse effect" determinations for historic bridges must be mitigated to comply with Section 106 of the NHPA and these items are documented through a Memorandum of Agreement (MOA) between the FHWA, MHT, and the Advisory Council on Historic Preservation (ACHP), with concurrence by the LG and SHA. The MOA should begin to be circulated as part of the MHT consultation process. The LG, along with SHA and the MHT will propose the method of mitigation and draft the MOA. All three parties will sign the MOA and FHWA will then forward it to ACHP, which will sign the MOA and then return it to FHWA. All MOAs will be fully executed (approved) concurrently with the CE/4(f) by FHWA. Negotiation and execution of the MOA may be used as a possible measure, but may not be the only means to minimize harm.

- *Coordination*
  Coordination with ACHP, MHT and local preservation groups should be provided for proof of compliance.

- *Temporary use (if applicable)*
  If applicable, the LG must demonstrate that temporary easements meet the four criteria for temporary occupancy.

- *Determination and approval*
  If the LG has satisfied the requirements in each of the above sections and demonstrated there is no feasible and prudent alternative that avoids the Section 4(f) impact, FHWA can then approve the use of the Section 4(f) resource.

US Department of Transportation
Federal Highway Administration
Programmatic Section 4(f) Determination and Approval
Under the
Nationwide Section 4(f) Evaluation
and Approval for Federal Aid Highway Projects That
Necessitate the Use of Historic Bridges

Section 4(f) of the US Department of Transportation Act of 1966 [49 U.S.C. 303 (c)] permits the use of land from a publicly-owned public park or recreation area, wildlife or waterfowl refuge, or any significant historic site (as determined by the officials having jurisdiction over the park, recreation area, refuge or historic site) only if there is no feasible and prudent alternative to the use of land, and if the action includes all possible planning to minimize harm to the Section 4(f) property resulting from such use.

The Programmatic Section 4(f) Evaluation is a streamlined approach, applicable only under the particular circumstances prescribed in the following template. Use of this template is confined solely to Federal Highway Administration (FHWA) projects that necessitate the use of historic bridges. It cannot be used for projects requiring an Environmental Impact Statement (EIS), unless there has been a late discovery of Section 4(f) involvement for an approved EIS. For the purpose of this Programmatic Section 4(f) Evaluation, the "use" of a historic bridge that is listed on or eligible for inclusion on the National Register of Historic Places (NRHP) is defined as "impairing the historic integrity of the bridge either by rehabilitation or demolition".

Rehabilitation that does not impair the historic integrity of the bridge as determined by the procedures implementing Section 106 of the National Historic Preservation Act (NHPA) and 36 CFR 800 is not subject to the requirements of Section 4(f). In addition, if the bridge is to be replaced, an agreement has been reached pursuant to Section 106 of the NHPA and 36 CFR 800, and the marketing of the bridge to a responsible party which will maintain and preserve the historic integrity of the bridge is successful, the requirements of Section 4(f) do not apply.

Coordination with the State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (if applicable) must be completed prior to completing this template. Consult the Final Nationwide Section 4(f) Evaluation, dated July 5, 1983, as it relates to the following items. The Final Nationwide Section 4(f) applicability criteria are included in the Appendix of this document. Complete all items.

A. Description/Location of the Historic Bridge:

Provide description of the historic bridge. Include location map.

B. Proposed Action:

Include purpose and need statement, along with a description of the selected action.

C. Project Applicability:

If a Programmatic Section 4(f) Evaluation is deemed "Not Applicable" for and item on this list, the Programmatic Section 4(f) Evaluation approach cannot be used. Rather, an individual Section 4(f) Evaluation must be prepared.

1. **Is the bridge being replaced or rehabilitated with federal funds?** **YES** [ ] **NO** [ ]

   If No, a Programmatic Section 4(f) Evaluation is not applicable.

2. **Will the project require the "use" of a historic bridge that is on or eligible for listing on the NRHP?** **YES** [ ] **NO** [ ]

   If No, a Programmatic Section 4(f) Evaluation is not applicable.

   Include an explanation stating or describing the "use" of or impacts to the bridge. Attach the NRHP eligibility determination letter and concurrence sheet from the SHPO.

3. **Is the bridge a National Historic Landmark?** **YES** [ ] **NO** [ ]

   If Yes, a Programmatic Section 4(f) Evaluation is not applicable.

4. **Will the proposed action result in an adverse effect determination pursuant to Section 106 of the NHPA and 36 CFR 800?** **YES** [ ] **NO** [ ]

   If No and the effect determination is "no properties affected" or "no adverse effect", a Programmatic Section 4(f) Evaluation is not required.

5. **Has consultation and subsequent agreement with the SHPO, ACHP (if appropriate) and other interested parties been reached through the procedures pursuant to Section 106 of the NHPA and 36 CFR 800?** **YES** [ ] **NO** [ ]

   If No, a Programmatic Section 4(f) Evaluation is not applicable.

   Attach coordination letter with SHPO and memorandum of agreement (MOA).

D. Alternates:

The following list is intended to be all-inclusive. If a feasible and prudent alternate is identified that is not discussed in this document, the Programmatic Section 4(f) Evaluation does not apply. The project record must clearly demonstrate that each of the following alternates was fully evaluated. Consult the Nationwide Programmatic Section 4(f) Evaluation for the generic reasons that might be addressed regarding each alternate.

1. Do nothing or no build.
2. Build a new structure at a different location without affecting the historic integrity of the existing bridge, as determined by the procedures implementing Section 106 of the NHPA and 36 CFR 800.
3. Rehabilitate the historic bridge without affecting the historic integrity of the structure, as determined by the procedures implementing Section 106 of the NHPA and 36 CFR 800.

	YES	NO
Were each of these alternates fully evaluated?	[ ]	[ ]

Summarize or attach a description of the alternates considered, addressing the following findings.

E. Findings

This Programmatic Section 4(f) Evaluation can be applied to a project as long as each of the following findings is supported by the circumstances, studies, and consultations on the project (see the Nationwide Programmatic Section 4(f) Evaluation for a generic description of each):

	YES	NO
1. Do Nothing or No Build. After studying this alternate, has it been proven not to be feasible and prudent based on one or both of the following reasons:	[ ]	[ ]

a. Maintenance issues
b. Safety issues

Summarize the findings and demonstrate why this alternate is not feasible and prudent, as compared to the proposed action—check yes if this alternate is not feasible and prudent.

	YES	NO
2. Build on New Location Without Using the Existing Bridge. After studying this alternate, has it been determined not to be feasible and prudent based on one or more of the following reasons:	[ ]	[ ]

a. Terrain issues.

b. Adverse social, economic, or environmental effects.

c. Engineering and economy issues of extraordinary magnitude.

d. Preservation of the old bridge is not feasible and prudent.

e. Liability/safety issues with the existing structure.

Summarize the findings and demonstrate why this alternate is not feasible and prudent, as compared to the proposed action—check yes if this alternate is not feasible and prudent.

	YES	NO
3. Rehabilitation Without Affecting the Historic Integrity of the Bridge. After studying this alternate, has it been determined not to be feasible and prudent based on one or both of the following reasons:	[ ]	[ ]

a. Structural deficiency of the bridge.

b. Geometrical deficiency of the bridge.

Summarize the findings and demonstrate why this alternate is not feasible and prudent, as compared to the proposed action—check yes if this alternate is not feasible and prudent.

F. Measures to Minimize Harm:

This Programmatic Section 4(f) Evaluation may only be approved if the proposed action includes all possible planning to minimize harm; and the officials with jurisdiction over the historic bridge (i.e. SHPO) agree, in writing, with these measures. These measures shall include one or more of the items described in the following questions:

	YES	NO
1. If the historic bridge is to be rehabilitated, will the historic integrity of the rehabilitated bridge be preserved to the greatest extent possible, consistent with unavoidable transportation need, safety, and load requirements?	[ ]	[ ]

Describe preservation efforts and reference coordination letter with SHPO, documenting its agreement with the rehabilitation plan.

	YES	NO
2. If the bridge is to be replaced, has the existing bridge been made available or marketed for an alternate use, with a responsible party agreeing to maintain and preserve the bridge?	[ ]	[ ]

Describe marketing efforts/plan, if marketing is appropriate.

	YES	NO
3. If the bridge is adversely affected, have all possible measures to minimize harm been incorporated into the project and has an agreement been reached with SHPO, ACHP (if appropriate) and other interested parties, pursuant with Section 106 of the NHPA and 36 CFR 800?	[ ]	[ ]

Attach coordination letter with SHPO and MOA.

	YES	NO
4. If the historic integrity of the existing bridge is to be adversely affected through rehabilitation, demolition or moving and mitigation includes recordation of the structure, has adequate recordation been made of the bridge in accordance with Historic American Engineering Record or other suitable standards (i.e. SHPO)?	[ ]	[ ]

Explain what was/will be done or refer to appropriate coordination letter or MOA.

	YES	NO
5. Have other mitigation measures been agreed upon?	[ ]	[ ]

Summarize or attach coordination letter with SHPO.

G. Coordination:

	YES	NO
Has consultation and subsequent agreement with the SHPO, ACHP (if appropriate) and other interested parties occurred?	[ ]	[ ]

Refer to the attached coordination letters.

H. Temporary Use (if applicable):

	YES	NO
If temporary easements, rights of entry or other temporary occupancies are required in a Section 4(f) resource, in addition to the "use" of a historic bridge which is the subject of this Programmatic Section 4(f) Evaluation, have the following conditions been satisfied?: • the duration is temporary (i.e., less than the time needed for construction of the project) and there is no change in the ownership of the land; • the scope of the work is minor (i.e., both the nature and magnitude of the changes to the Section 4(f) resource are minimal); • there are no anticipated permanent adverse physical impacts nor will there be interference with the activities or purposes of the resource, on either a temporary or permanent basis; • the land being used will be fully restored (i.e., the resource will be returned to a condition which is at least as good as that which existed prior to the project); and • the state, federal or local official(s) with jurisdiction over the resource has agreed, in writing, with the criteria of temporary use; that is, the above four conditions. Refer to the attached coordination letter attesting to the agreement.	[ ]	[ ]

I. Determination and Approval:

Based on this Programmatic Section 4(f) Evaluation, which includes a clear description of the evaluated alternates, measures to minimize harm, and the results of public and agency consultation and coordination, as evidenced herein and by the attachments, the FHWA has determined that:

- the project meets the applicability criteria set forth in the Nationwide Section 4(f) Evaluation and Approval for Federal-Aid Highway Projects that Necessitate the Use of Historic Bridges, dated July 5, 1983;
- all of the alternates set forth in Section D have been fully evaluated;
- there are no feasible and prudent alternates to the use of _____ (name of historic bridge); and
- the project complies with the measures to minimize harm in Section E, and agreement has been reached with the SHPO, ACHP (if appropriate) and all other interested and consulting parties on the effect determination and subsequent mitigation.

Accordingly, the FHWA approves the proposed use of _____ (name of historic bridge), under the Nationwide Section 4(f) Evaluation approved on July 5, 1983. If applicable, the FHWA also agrees that any project related temporary uses in Section 4(f) lands/resources are not subject to the requirements of Section 4(f).

Appendix K: Programmatic Section 4(f) Evaluation for Publicly-owned Public Parks, Recreation Areas, and Wildlife or Waterfowl Refuges, or Historic Sites

Programmatic Section 4(f) Evaluation for Publicly-owned Public Parks, Recreation Areas, and Wildlife or Waterfowl Refuges, or Historic Sites

- *Project applicability*
  A project impacting parks, recreation areas, and wildlife or waterfowl refuges, or historic sites must meet all the applicable criteria before being considered under the Programmatic approach. Generally this means that the project is not on new alignment and that the amount and location of the impacted land will not impair the remaining portion of the resource from its intended purpose.

- *Alternatives*
  LGs will be required to develop at least three additional alternatives that do not impact the Section 4(f) resource to determine if there is a feasible and prudent alternative that does not impact the Section 4(f) resource. The three alternatives include:
  - Do nothing or no build
  - Improve the existing roadway without using the adjacent Section 4(f) land
  - Build an improved facility on new location without using the Section 4(f) land

- *Measures to minimize harm*
  Mitigation is the method most often used to minimize harm to Section 4(f) resources. Mitigation frequently takes the form of replacement or restoration of lands or facilities impacted as a result of the project. In some cases, payment of fair market value for the impacted land is used in lieu of providing replacement lands. Depending on the resources funding source, payment may not be an option. Under law, lands funded through Section 6(f) of the LWCFA or Program Open Space (POS) can only be mitigated through replacement land of equal value. LGs are responsibly for obtaining funding information for all projects impacting publicly-owned public parks, recreation areas, and wildlife or waterfowl refuges.

- *Coordination*
  Relevant coordination, including consultation and subsequent agreement with the officials with jurisdiction over the Section 4(f) resource must be included as proof of compliance. Projects that impact Section 6(f) lands require coordination and approval from the Department of the Interior's National Park Service. Projects impacting POS lands require coordination and approval from the Secretary of the Department of Natural Resources, the Secretary of the Department of Budget and Fiscal Planning, and the Director of the Department of Planning.

- *Temporary use (if applicable)*
  If applicable, the LG must demonstrate that temporary easements meet the four criteria for temporary occupancy.

- *Determination and approval*
  If the LG has satisfied the requirements in each of the above sections and demonstrated there is no feasible and prudent alternative that avoids the Section 4(f) impact, FHWA can then approve the use of the Section 4(f) land.

US Department of Transportation
Federal Highway Administration
Programmatic Section 4(f) Determination and Approval
Under The
Nationwide Section 4(f) Evaluation
And Approval for Federal Aid Highway Projects With Minor Involvements With Public Parks, Recreational Lands, And Wildlife And Waterfowl Refuges

Section 4(f) of the US Department of Transportation Act of 1966 [49 U.S.C. 303(c)] permits the use of land from a publicly-owned public park or recreation area, wildlife or waterfowl refuge, or any significant historic site (as determined by the officials having jurisdiction over the park, recreation area, refuge or historic site) only if there is no feasible and prudent alternative to the use of land and the action includes all possible planning to minimize harm to the Section 4(f) property resulting from such use.

This Programmatic Section 4(f) Evaluation is a streamlined approach, applicable only under the particular circumstances prescribed in the following template. Coordination with the agency(ies) having jurisdiction over the impacted Section 4(f) resource must be completed prior to completing this template. Use of this template is confined solely to Federal Highway Administration (FHWA) projects with **minor** involvements with publicly-owned public parks, recreational lands, and wildlife and waterfowl refuges. It cannot be used for projects requiring an Environmental Impact Statement (EIS), unless there has been a late discovery of Section 4(f) involvement for an approved EIS. Consult the Final Nationwide Section 4(f) Evaluation, dated December 23, 1986, as it relates to the following items. The Final Nationwide Section 4(f) applicability criteria are included in the Appendix of this document. Complete all items.

A. Description/Location of the Publicly-owned Public Park or Recreation Area, or Wildlife or Waterfowl Refuge:

Provide description of the publicly-owned public park or recreation area, or wildlife or waterfowl refuge. Include location map.

B. Proposed Action:

Include purpose and need statement, along with a description of the selected action.

C. Project Applicability:

If a Programmatic Section 4(f) Evaluation is deemed "Not Applicable" for any item on this list, the Programmatic Section 4(f) Evaluation approach cannot be used. Rather, an individual Section 4(f) Evaluation must be prepared.

	YES	NO
1. Is the proposed project designed to improve the operational characteristics, safety, and/or physical condition of the existing highway facility on essentially the same alignment?	[ ]	[ ]

This includes "4R" work (resurfacing, restoration, rehabilitation and reconstruction), safety improvements, traffic operation improvements, bicycle and pedestrian facilities, bridge replacements on essentially the same alignment and construction of additional lanes (see the Final Nationwide Section 4(f) Evaluation for examples).

If No, a Programmatic Section 4(f) Evaluation is not applicable.

	YES	NO
2. Is the publicly-owned public park, recreational area, or wildlife or waterfowl refuge located adjacent to the existing highway?	[ ]	[ ]

If No, a Programmatic Section 4(f) Evaluation is not applicable.

Attach a graphic showing the relationship between the Section 4(f) resource and proposed highway improvements, showing the existing Section 4(f) property and proposed right-of-way lines.

	YES	NO
3. Will the amount and location of the land to be used impair the use of the remaining Section 4(f) resource, in whole or in part, for its intended purpose?	[ ]	[ ]

If Yes, a Programmatic Section 4(f) Evaluation is not applicable.

Attach a coordination letter from the agency with jurisdiction over the Section 4(f) resource indicating its agreement that the project would not impair the use of the remainder of the resource.

4. Will the total amount of land to be acquired from the Section 4(f) resource exceed the values in the following table: **YES** [ ] **NO** [ ]

Total Size of Section 4(f) Resource:	**Maximum to be Acquired:**
< 10 acres	10 percent of site
10 acres-100 acres	1 acre
> 100 acres	1 percent of site

If Yes, a Programmatic Section 4(f) Evaluation is not applicable.

Provide the acreage of land to be acquired from the Section 4(f) resource and the total acreage of the resource.

5. Will any proximity impacts of the project, such as noise and water pollution, wildlife and habitat effects, aesthetic values, etc., impair the remaining Section 4(f) resource for its intended purpose? **YES** [ ] **NO** [ ]

If Yes, a Programmatic Section 4(f) Evaluation is not applicable.

If no, explain why not, and attach coordination letter indicating the official with jurisdiction's agreement with such.

6. Do the officials with jurisdiction over the Section 4(f) resource agree, in writing, with the assessment of impacts of the proposed project and the proposed mitigation for the Section 4(f) resource? **YES** [ ] **NO** [ ]

If No, a Programmatic Section 4(f) Evaluation is not applicable.

Attach coordination letter indicating this agreement.

	YES	NO
7. Does the project use land from a resource purchased or improved with funds under the Land and Water Conservation Fund Act, Maryland Program Open Space program, Federal Aid in Fish Restoration Act (Dingell-Johnson Act), Federal Aid in Wildlife Act (Pittman-Robertson Act), or similar laws, or lands otherwise encumbered with a Federal interest?	[ ]	[ ]
If Yes, has coordination been completed with the appropriate federal and/or state agency to ascertain the agency's position on the land conversion or transfer?	[ ]	[ ]

If the federal agency objects to the land conversion or transfer, a Programmatic Section 4(f) Evaluation is not applicable.

Attach coordination letter, describing the proposed mitigation and agreement with the agency(ies) with jurisdiction.

D. Alternatives

The following list is intended to be all-inclusive. If a feasible and prudent alternative is identified that is not discussed in this document, the Programmatic Section 4(f) Evaluation does not apply. The project record must clearly demonstrate that each of following alternatives was fully evaluated. Consult the Nationwide Programmatic Section 4(f) Evaluation has the generic reasons that might be addressed regarding each alternative.

1. Do nothing or no build.
2. Improve the existing roadway without using the adjacent public park, recreational land, or wildlife or waterfowl refuge.
3. Build an improved facility on new location without using the public park, recreational land, or wildlife or waterfowl refuge.

	YES	NO
Were each of these alternatives fully evaluated?	[ ]	[ ]

Summarize or attach a description of the alternatives considered, addressing the following findings.

E. Findings

This Programmatic Section 4(f) Evaluation can be applied to a project as long as each of the following findings is supported by the circumstances, studies, and consultations on the project (see the Nationwide Programmatic Section 4(f) Evaluation for a generic description of each):

	YES	NO
1. Do Nothing or No Build. After studying this alternative, it has been determined not to be feasible and prudent based on one or more of the following reasons:	[ ]	[ ]

a. Would not correct existing or projected capacity deficiencies.
b. Would not correct existing safety hazards.
c. Would not correct existing deteriorated conditions and maintenance problems.
d. Would result in a cost or community impact of extraordinary magnitude, or result in unusual problems by not addressing the need of the project.

Summarize the findings and demonstrate why this alternative is not feasible and prudent, as compared to the proposed action—check yes if this alternative is not feasible and prudent.

	YES	NO
2. Improvement without Using the Adjacent Section 4(f) Lands. After studying this alternative, it has been determined not to be feasible and prudent based on one or more of the following reasons:	[ ]	[ ]

a. Substantial adverse community impacts to adjacent homes, businesses, or other improved properties.
b. Substantial increase in roadway or structure costs.
c. Unique engineering, traffic, maintenance, or safety problems.
d. Substantial adverse social, economic, or environmental impacts.
e. Identified transportation needs would not be met.
f. Impacts, costs, or problems are unusual or unique, or of extraordinary magnitude when compared with the proposed use of the Section 4(f) resource.

Summarize the findings and demonstrate why this alternative is not feasible and prudent, as compared to the proposed action—check yes if this alternative is not feasible and prudent.

	YES	NO
3. Alternatives on New Location. After studying this alternative, it has been determined not to be feasible and prudent based on one or more of the following reasons:	[ ]	[ ]

a. Identified transportation needs would not be met.

b. Substantial adverse social, economic, or environmental impacts.

c. Substantial increase in cost or inability to achieve minimum design criteria.

d. Impacts, costs, or problems are unusual or unique, or of extraordinary magnitude when compared with the proposed use of the Section 4(f) resource.

Summarize the findings and demonstrate why this alternative is not feasible and prudent, as compared to the proposed action—check yes if this alternative is not feasible and prudent.

F. Measures to Minimize Harm

This Programmatic Section 4(f) Evaluation may only be approved if the proposed action includes all possible planning to minimize harm and the officials with jurisdiction over the Section 4(f) resource agree, in writing, with these measures. These mitigation measures shall include one or more of the following described in the following questions:

	YES	NO
1. Will there be a replacement of lands used with lands of reasonably equivalent usefulness and location and of at least comparable value?	[ ]	[ ]

Explain replacement of existing lands.

	YES	NO
2. Will there be a replacement of facilities impacted by the project, including sidewalks, paths, benches, lights, trees and other facilities?	**[ ]**	

Explain replacement of existing facilities.

	YES	NO
3. Will there be restoration and landscaping of disturbed areas?	**[ ]**	
Describe efforts.		

	YES	NO
4. Will there be an incorporation of design features, where necessary, to reduce or minimize impacts to the Section 4(f) resource?	[ ]	[ ]
Describe efforts.		

	YES	NO
5. In lieu of providing replacement land or facilities, will there be payment of the fair market value of the land and improvements taken?	[ ]	[ ]
Provide estimated cost.		

	YES	NO
6. Will there be additional mitigation measures as determined by the officials with jurisdiction over the Section 4(f) resource?	[ ]	[ ]
Describe measures.		

G. Coordination

	YES	NO
Has consultation and subsequent agreement with the official(s) with jurisdiction over the Section 4(f) resource occurred?	[ ]	[ ]
Refer to the attached coordination letters.		

H. Temporary Use (if applicable)

	YES	NO
If temporary easements, rights of entry or other temporary occupancies are required in a Section 4(f) resource, in addition to the permanent use of land which is the subject of this Programmatic Section 4(f) Evaluation, have the following conditions have been satisfied?: • the duration is temporary (i.e., less than the time needed for construction of the project) and there is no change in the ownership of the land; • the scope of the work is minor (i.e., both the nature and magnitude of the changes to the Section 4(f) resource are minimal); • there are no anticipated permanent adverse physical impacts nor will there be interference with the activities or purposes of the resource, on either a temporary or permanent basis; • the land being used will be fully restored (i.e., the resource will be returned to a condition which is at least as good as that which existed prior to the project); and • the state, federal or local official(s) with jurisdiction over the resource has agreed, in writing, with the criteria of temporary use; that is, the above four conditions. Refer to the attached coordination letter attesting to the agreement.	[ ]	[ ]

I. Determination and Approval

Based on this Programmatic Section 4(f) Evaluation, which includes a clear description of the evaluated alternatives, measures to minimize harm, and the results of public and agency consultation and coordination, as evidenced herein and by the attachments, the FHWA has determined that:

- the project meets the applicability criteria set forth in the Nationwide Section 4(f) Evaluation and Approval for Federal-Aid Highway Projects with Minor Involvements with Public Parks, Recreational Lands, and Wildlife and Waterfowl Refuges, dated December 23, 1986;
- all of the alternatives set forth in Section B have been fully evaluated;
- there are no feasible and prudent alternatives to the use of _____(name of the Section 4(f) resource); and
- the project complies with the measures to minimize harm in Section C and agreement has been reached with the official(s) with jurisdiction over the resource regarding the impacts and mitigation.

Accordingly, the FHWA approves the proposed use of the _____ (name of the public park, recreational land, or wildlife or waterfowl refuge) under the Nationwide Section 4(f) Evaluation approved on December 23, 1986. If applicable, the FHWA also agrees that any project related temporary uses in Section 4(f) lands/resources are not subject to the requirements of Section 4(f).

US Department of Transportation
Federal Highway Administration
Programmatic Section 4(f) Determination And Approval
Under The
Nationwide Section 4(f) Evaluation
And Approval For Federal Aid Highway Projects With
Minor Involvements With Historic Sites

Section 4(f) of the US Department of Transportation Act of 1966 [49 U.S.C. 303(c)] permits the use of land from a publicly-owned public park or recreation area, wildlife or waterfowl refuge, or any significant historic site (as determined by the officials having jurisdiction over the park, recreation area, refuge or historic site) only if there is no feasible and prudent alternative to the use of land and the action includes all possible planning to minimize harm to the Section 4(f) property resulting from such use.

This Programmatic Section 4(f) Evaluation is a streamlined approach, applicable only under the particular circumstances prescribed in the following template. Use of this template is confined solely to Federal Highway Administration (FHWA) projects with **minor** involvements with historic sites. Coordination with the appropriate agency(ies) having jurisdiction over the impacted Section 4(f) resource must be completed prior to completing this template**.** It cannot be used for projects requiring an Environmental Impact Statement (EIS), unless there has been a late discovery of Section 4(f) involvement for an approved EIS. Consult the Final Nationwide Section 4(f) Evaluation, dated December 23, 1986, as it relates to the following items. The Final Nationwide Section 4(f) applicability criteria are included in the Appendix of this document. Complete all items.

A. Description/Location of the Historic Site:

Provide description of historic site. Include location map.

B. Proposed Action:

Include purpose and need statement, along with a description of the selected action.

C. Project Applicability:

If a Programmatic Section 4(f) Evaluation is deemed "Not Applicable" for any item on this list, the Programmatic Section 4(f) Evaluation approach cannot be used. Rather, an individual Section 4(f) Evaluation must be prepared.

	YES	NO
1. Is the proposed project designed to improve the operational characteristics, safety, and/or physical condition of the existing highway facility on essentially the same alignment?	[ ]	[ ]

This includes "4R" work (resurfacing, restoration, rehabilitation, and reconstruction), safety improvements, traffic operation improvements, bicycle and pedestrian facilities, bridge replacements on essentially the same alignment and construction of additional lanes (see the Final Nationwide Section 4(f) Evaluation for examples).

If No, a Programmatic Section 4(f) Evaluation is not applicable.

	YES	NO
2. Is the historic site(s) located adjacent to the existing highway?	[ ]	[ ]

If No, a Programmatic Section 4(f) Evaluation is not applicable.

Attach a graphic showing the relationship between the Section 4(f) resource and the proposed highway improvements, showing the existing historic site boundary and proposed right-of-way lines.

	YES	NO
3. Does the project require the removal or alteration of historic buildings, structures or objects on the historic site(s) within the historic site boundary?	[ ]	[ ]

If Yes, a Programmatic Section 4(f) Evaluation is not applicable.

	YES	NO
4. Does the project require the disturbance or removal of archeological resources that are important to preserve in place rather than to remove for archeological research?	[ ]	[ ]

If Yes, a Programmatic Section 4(f) Evaluation is not applicable.

Describe the impacts to any archeological sites and attach the coordination letter from the SHPO, supporting the NO response.

	YES	NO
5. Is the impact to the historic site(s) resulting from the use of land considered minor (minor is defined as either a "no properties affected" or "no adverse effect" determination, when applying the requirements of Section 106 of the National Historic Preservation Act (NHPA) and 36 CFR 800)?	[ ]	[ ]

If No, a Programmatic Section 4(f) Evaluation is not applicable.

Describe the impacts and amount of land affected and attach the MHT's effect determination.

	YES	NO
6. Has the SHPO agreed, in writing, with the assessment of impacts of the proposed project on and the proposed mitigation for the historic sites(s)?	[ ]	[ ]

If No, a Programmatic Section 4(f) Evaluation is not applicable.

Attach the coordination letter or concurrence from the SHPO.

D. Alternatives

The following list is intended to be all-inclusive. If a feasible and prudent alternative is identified that is not discussed in this document, the Programmatic Section 4(f) Evaluation does not apply. The project record must clearly demonstrate that each of the following alternatives was fully evaluated. Consult the Nationwide Programmatic Section 4(f) Evaluation for the generic reasons that might be addressed regarding each alternative.

1. Do nothing or no build.
2. Improve the existing highway without using the adjacent historic site.
3. Build an improved facility on new location without using the historic site.

Were each of these alternatives fully evaluated? YES [ ] NO [ ]

Summarize or attach a description of the alternatives considered, addressing the following findings.

E. Findings

This Programmatic Section 4(f) Evaluation can be applied to a project as long as each of the following findings is supported by the circumstances, studies, and consultations on the project (see the Nationwide Programmatic Section 4(f) Evaluation for a generic description of each):

1. **Do Nothing or No Build.** After studying this alternative, has it been determined not to be feasible and prudent based on one or more of the following reasons: YES [ ] NO [ ]

    a. Would not correct existing or projected capacity deficiencies.
    b. Would not correct existing safety hazards.
    c. Would not correct existing deteriorated conditions and maintenance problems.
    d. Would result in a cost or community impact of extraordinary magnitude, or result in unusual problems by not addressing the need of the project.

    Summarize the findings and demonstrate why this alternative is not feasible and prudent, as compared to the proposed action—check yes if this alternative is not feasible and prudent.

	YES	NO
2. Improvement without Using the Adjacent Section 4(f) Lands. After studying this alternative, has it been determined not to be feasible and prudent based on one or more of the following reasons:	[ ]	[ ]

a. Substantial adverse community impacts to adjacent homes, businesses or other improved properties.

b. Substantial increase in roadway or structure costs.

c. Unique engineering, traffic, maintenance, or safety problems.

d. Substantial adverse social, economic, or environmental impacts.

e. Identified transportation needs would not be met.

f. Impacts, costs, or problems are unusual or unique, or of extraordinary magnitude when compared with the proposed use of the Section 4(f) resource.

Summarize the findings and demonstrate why this alternative is not feasible and prudent, as compared to the proposed action—check yes if this alternative is not feasible and prudent.

	YES	NO
3. Alternative on New Location. After studying this alternative, has it been determined not to be feasible and prudent based on one or more of the following reasons:	[ ]	[ ]

a. Identified transportation needs would not be met.

b. Substantial adverse social, economic, or environmental impacts.

c. Substantial increase in cost or engineering difficulties.

d. Impacts, costs or problems of unusual, unique, or extraordinary magnitude when compared with the proposed use of the Section 4(f) resource.

Summarize the findings and demonstrate why this alternative is not feasible and prudent, as compared to the proposed action—check yes if this alternative is not feasible and prudent.

F. Measures to Minimize Harm

This Programmatic Section 4(f) Evaluation may only be approved if the proposed action includes all possible planning to minimize harm and the officials with jurisdiction over the Section 4(f) resource agree, in writing, with these measures. These measures shall include one or more of the items described in the following questions:

	YES	NO
Have all possible measures to minimize harm (to reduce or minimize impacts to the Section 4(f) resource and consisting of measures to preserve the historic integrity of the site) been incorporated into the project, and agreed to by the SHPO, ACHP (if applicable), and other interested parties consistent with Section 106 of the NHPA and 36 CFR 800?	[ ]	[ ]

Discuss the mitigation agreements and attach the coordination letter(s).

G. Coordination

	YES	NO
Has consultation and subsequent agreement with the SHPO, ACHP (if applicable, and other interested parties occurred?	[ ]	[ ]

Refer to the attached coordination letters.

H. Temporary Use (if applicable)

	YES	NO
If temporary easements, rights of entry or other temporary occupancies are required in a Section 4(f) resource, in addition to the permanent use of land which is the subject of this Programmatic Section 4(f) Evaluation, have the following conditions have been satisfied?: • the duration is temporary (i.e., less than the time needed for construction of the project) and there is no change in the ownership of the land; • the scope of the work is minor (i.e., both the nature and magnitude of the changes to the Section 4(f) resource are minimal); • there are no anticipated permanent adverse physical impacts nor will there be interference with the activities or purposes of the resource, on either a temporary or permanent basis; • the land being used will be fully restored (i.e., the resource will be returned to a condition which is at least as good as that which existed prior to the project); and • the state, federal or local official(s) with jurisdiction over the resource has agreed, in writing, with the criteria of temporary use; that is, the above four conditions. Refer to the attached coordination letter attesting to the agreement.	[ ]	[ ]

I. Determination and Approval

Based on this Programmatic Section 4(f) Evaluation, which includes a clear description of the evaluated alternatives, measures to minimize harm, and the results of public and agency consultation and coordination, as evidenced herein and by the attachments, the FHWA has determined that:

- the project meets the applicability criteria set forth in the Nationwide Section 4(f) Evaluation and Approval for Federal-Aid Highway Projects with Minor Involvements with Historic Sites, dated December 23, 1986;
- all of the alternatives set forth in Section B have been fully evaluated;
- there are no feasible and prudent alternatives to the use of _____ (name of historic site(s)); and
- the project complies with the measures to minimize harm in Section C and agreement has been reached with the SHPO, ACHP (if appropriate) and all other interested and consulting parties on the effect determination and subsequent mitigation.

Accordingly, the FHWA approves the proposed use of _____(name of the historic site(s)) under the Nationwide Section 4(f) Evaluation approved on December 23, 1986. If applicable, the FHWA also agrees that any project related temporary uses in Section 4(f) lands/resources are not subject to the requirements of Section 4(f).

Appendix L: Sample Wording for CEs When Section 4(f) Requirements are Applicable

Programmatic Section 4(f) Evaluation for the Use of Historic Bridges

The Maryland Historical Trust (MHT) determined that Bridge No. 123 (MHT Inventory No. F-4567) is eligible for listing in the NRHP and that there does not appear to be any other historic properties within the area of potential effects. The MHT concurred that the proposed replacement will have an adverse effect on the existing bridge. Therefore, a Programmatic Section 4(f) Evaluation is applicable for this project and was prepared in accordance with the Department of Transportation Act of 1966, 49 U.S.C. 303, and Section 18(a) of the Federal-Aid Highway Act of 1956, 23 U.S.C. 138 **(Attachment X)**.

Franklin County has entered into a Memorandum of Agreement (MOA) with the MHT and the Federal Highway Administration (FHWA) to mitigate the adverse effects brought about by the replacement of Bridge No. 123. The MOA outlines the stipulations that Franklin County will implement to mitigate the adverse effects of the project. These include preparation of a Maryland Inventory of Historic Properties form, photographic recordation of the structure, and creation of an interpretive display. The MOA was signed by the MHT and Franklin County on October 1, 2005 and September 1, 2005, respectively, and has been forwarded to the FHWA for signature **(Attachment X)**.

Programmatic Section 4(f) Evaluation for the Use of Publicly-Owned Public Parks, Recreation Areas, or Wildlife or Waterfowl Refuges

A minor amount of right-of-way will be required from the adjacent publicly-owned wildlife refuge. The Alphabet Wildlife Management Area is 85 acres. The project will result in the taking of 0.25 acre of permanent right-of-way, 0.05 acre of revertible slope easement, and 0.15 acre of temporary construction easement. The total disturbed area within the Alphabet Wildlife Management Area is 0.45 acre and would fall into the minor use category. Therefore, a Programmatic Section 4(f) Evaluation is applicable for this project and was prepared in accordance with the Department of Transportation Act of 1966, 49 U.S.C. 303, and Section 18(a) of the Federal-Aid Highway Act of 1956, 23 U.S.C. 138 **(Attachment X)**.

Programmatic Section 4(f) Evaluation for the Use of Historic Sites

The Maryland Historical Trust (MHT) determined that the replacement of Bridge No. 123 on Alphabet Road over Number Branch will have no adverse effect on the Franklin Historic District (MHT Inventory No. F-7890). However, 0.15 acre of permanent easement is required from the Franklin Historic District for drainage improvements associated with the bridge replacement. Therefore, a Programmatic Section 4(f) Evaluation is applicable for this project and was prepared in accordance with the Department of Transportation Act of 1966, 49 U.S.C. 303, and Section 18(a) of the Federal-Aid Highway Act of 1956, 23 U.S.C. 138 **(Attachment X)**.

Franklin County has entered into a Memorandum of Agreement (MOA) with the MHT and the Federal Highway Administration (FHWA) to mitigate the effects brought about by the drainage improvements associated with the replacement of Bridge No. 123. The MOA outlines the stipulations that Franklin County will implement to mitigate the adverse effects of the project. These include preparation of a Maryland Inventory of

Historic Properties form, replacement of an ornamental fence and retaining wall within the Franklin Historic District, and creation of mitigation planting plans. The MOA was signed by the MHT and Franklin County on October 1, 2005 and September 1, 2005, respectively, and has been forwarded to the FHWA for signature (**Attachment X**).

De Minimis Finding

The MHT concurred with the *de minimis* determination for the impacts to contributing properties within East and West Franklin historic districts. Pursuant to the regulations set forth in Section 106 of the National Historic Preservation Act, the Franklin County Committee of MHT was notified of the effect of the project on historic properties, invited to participate in the Section 106 process and provided a reasonable opportunity for comment. No comments were received. The majority of the proposed project work occurs directly along the Alphabet Road corridor and will not adversely effect the five National Register of Historic Places eligible properties within the area of potential effects: F-123 (Four Mile House), F-345 (Five Mile House), F-678 (Six Mile House), F-901 (East Franklin Historic District), and F-234 (West Franklin Historic District).

Non-Applicability of Section 4(f)

The staging area and construction access for the proposed replacement of Bridge No. 123 on Alphabet Road over Number Branch would temporarily impact approximately 0.16 acre of Franklin State Park. These temporary impacts are consistent with the following five criteria for Section 4(f) non-applicability:

- The duration (of the occupancy) will be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;
- The scope of work will be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) resource are minimal;
- There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purpose of the resource, on either a temporary or permanent basis;
- The land being used will be fully restored, i.e., the resource will be returned to a condition which is at least as good as that which existed prior to the project; and
- There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.

The above temporary use criteria were discussed with the Franklin County Department of Recreation and Parks (DRP), the officials with jurisdiction over the Franklin State Park. On June 1, 2006, the DRP concurred with the above temporary use criteria (**Attachment X**). Thus, the 0.16 acre of temporary impacts associated with the staging area and construction access would not be subject to the requirements of Section 4(f).

APPENDIX M: SAMPLE FORM 25C

☐ - Preliminary

☐ - Final 25C

☐ - Congressional District

ALLEGANY COUNTY LOCAL GOVERMENT BRIDGE REPLACEMENT/REHABILITATION

A. **FEDERAL AID PROGRAMING DOCUMENT**

Federal Contract No _____ Local/Termini: _____

State Contract No _____

Local Contract No. _____ Project Length: _____

Item No. _____ State Road Inventory Milepoints: _____

ADT

Present/Yr.: _____

Future/Yr. : _____

Federal-aid System: _____

Probable Ad Date: _____

Local/State Supplemental Agreement Required: Yes ☒ No ☐

B. **WORK PHASE**

	Total Cost	Federal Funds	State/Local
PE			
ROW			
Constr.(Neat & 10%)			
Project Total:			

C. **PUBLIC HEARINGS**

☐ Required ☐ Location Hearing (Date: _____)

☐ Not Required ☐ Design Hearing (Date: _____)

☐ To be determined ☐ Combined Hearing (Date: _____)

SHADED AREA TO BE FILLED OUT BY SHA

E. **ENVIRONMENTAL**

☐ Catagorical Exclusion No. (Date:_____)

☐ Envir. Assessment/FONSI (Date:_____)

☐ Envir. Impact Statement (Date:_____)

☐ 4(F) Statement (Date:_____)

F. **PLANNING**

Clearing House Control No. _____ ☐ Exempt

Urban Area N/A ☐ Exempt

TIP No. _____ STIP No. _____

D. **PREVIOUS FEDERAL-AID PROJECTS** PE _____ ROW _____

G. **PROJECT DESCRIPTION**

1. Existing Conditions: _____

2. Proposed Project: _____

3. Additional right-of-way required? **Yes** Proposed width: _____ Relocation(s) required? **Yes** No. of businesses/residents: _____

H. **BRIDGE ELEMENTS**

☐ Bridge Replacement Bridge No. _____ Code: _____ 404 Permit (Navigation Clearance) ☐ Required

☐ Bridge Rehabilitation Sufficiency Rating _____ Bridge Length: _____ ☐ Not Required

I. **CONSTRUCTION DATA**

1. Construction within 2 miles of airport? **Yes**
2. Contract Award: ☐ Bid ☐ Force Account ☐ Other, explain _____

   If force account, work by: _____
3. Utility relocation/adjustment required? **Yes** Name of Utility _____ Estimated Cost _____

   Railroad relocation/adjustment required? **Yes** Name of Railroad _____ Estimated Cost _____

PREPARED BY: _____ **DATE:** _____ **TELEPHONE:** _____ **COUNTY/FIRM:** _____

SHA Recommendation for Approval: SHA Approval of Federal Funds: SHA/FHWA Approval of Federal Funds:

Director Date

Deputy Adm. for Planning and Engineering Date

Date

SHA Contract No. _____

F.A.P. No. _____

☐ Rural Road
☐ Urban Road

I. **DESIGN DATA:**

DESIGN ELEMENT	* EXISTING ELEMENT	* PROPOSED DESIGN CRITERIA	** MEETS SHA/ASSHTO DESIGN STANDARD
Design Speed	mph.	mph.	Yes
Posted Speed Limits	mph.	mph.	Yes
Number of Lanes			Yes
Through-Lane Width	ft.	ft.	Yes
Aux.-Lane Width	ft.	ft.	Yes
Shoulder Width Right	ft.	ft.	Yes
Left	ft.	ft.	Yes
Cross Slope	ft./ft.	ft./ft.	Yes
Horizontal Alignment:			
Curvature *	Yes	Yes	Yes
Superelevation *	Yes	Yes	Yes
Sight Distance *	Yes	Yes	Yes
Vertical Alignment:			
Grades *	Yes	Yes	Yes
Sight Distance *	Yes	Yes	Yes
Bridge Clear Width	ft.	ft.	Yes
Bridge Railings *	Yes	Yes	Yes
Median Width	ft.	ft.	Yes
Clear Zone Width	ft.	ft.	Yes
Ditch Slopes (front/back)			Yes
Culvert End Treatments *	Yes	Yes	Yes
Guardrail *	Yes	Yes	Yes
Signing *	Yes	Yes	Yes
Pavement Markings *	Yes	Yes	Yes

* Indicate yes, no, or N/A whether "Existing Condition" meets applicable SHA Design Guide standard. Indicate yes, no, or N/A whether "Proposed Design" will improve existing condition.

** If criteria does not meet applicable standards, a design exception must be requested prior to P.S.&E. submittal.

J. **CERTIFICATION**

☐ - This project meets all applicable AASHTO/SHA design criteria. Approval of the SHA Chief Engineer is not required.

☐ - The construction of this project incorporating the above design feature is recommended for Federal funding. Justification for proposed design elements that do not meet applicable AASHTO/SHA design criteria, and three-year accident history/analysis are attached.

Note: Complete Sections 1 (Design Data) and J (Certification) using the information available. Missing or revised data should be provided as the project develops.

APPENDIX N: SAMPLE TRILOGY LETTERS

Coordination Sheet for Maryland Department of Natural Resources, Project Review Division information on fisheries resources, including anadromous fish, related to project locations and study areas

DATE OF REQUEST: NAME OF REQUESTOR: FMIS#: Contact EM for FMIS No.

PROJECT NAME AND LOCATION:

NAME OF STREAM(S) (and MDE Use Classification) WITHIN THE STUDY AREA:

SUB-BASIN (8 digit watershed), County:

DNR RESPONSE:

____ Generally, no instream work is permitted in Use I streams during the period of March 1 through June 15, inclusive, during any year.

____ Where presence of yellow perch has been documented in the vicinity of an instream project area, generally no instream work is permitted in Use I waters during the period of February 15 through June 15, inclusive, during any year.

____ Generally, no instream work is permitted in Use II streams during the period of June 1 through September 30 and December 16 through March 14th, inclusive, during any year.

____ Generally, no instream work is permitted in Use III streams during the period of October 1 through April 30, inclusive, during any year.

____ Generally, no instream work is permitted in Use IV streams during the period of March 1 through May 31, inclusive, during any year.

ADDITIONAL FISHERIES RESOURCES NOTES (to be added by PRD):

ADDITIONAL COMMENTS ON BMPS:

FURTHER COORDINATION NEEDED:

MD DNR, Project Review Division signature

_____

_____

DATE: _____

<<DATE>>

RE: <<Project Number>>
<<Project Location>>
<<Project Scope>>
<<County>>

Ms. Lori Byrne, Environmental Review Specialist
Wildlife and Heritage Division
Department of Natural Resources
Tawes State Office Building, E-1
Annapolis MD 21401

Dear Ms. Byrne:

The <<your organization>> is proposing to use federal funds under the Federal Aid Bridge Program to <<scope of work>> in <<location of project>>, Maryland. << description of area and work to be done>>.

We request any information concerning state threatened or endangered species and unique habitat that may occur in the study area.

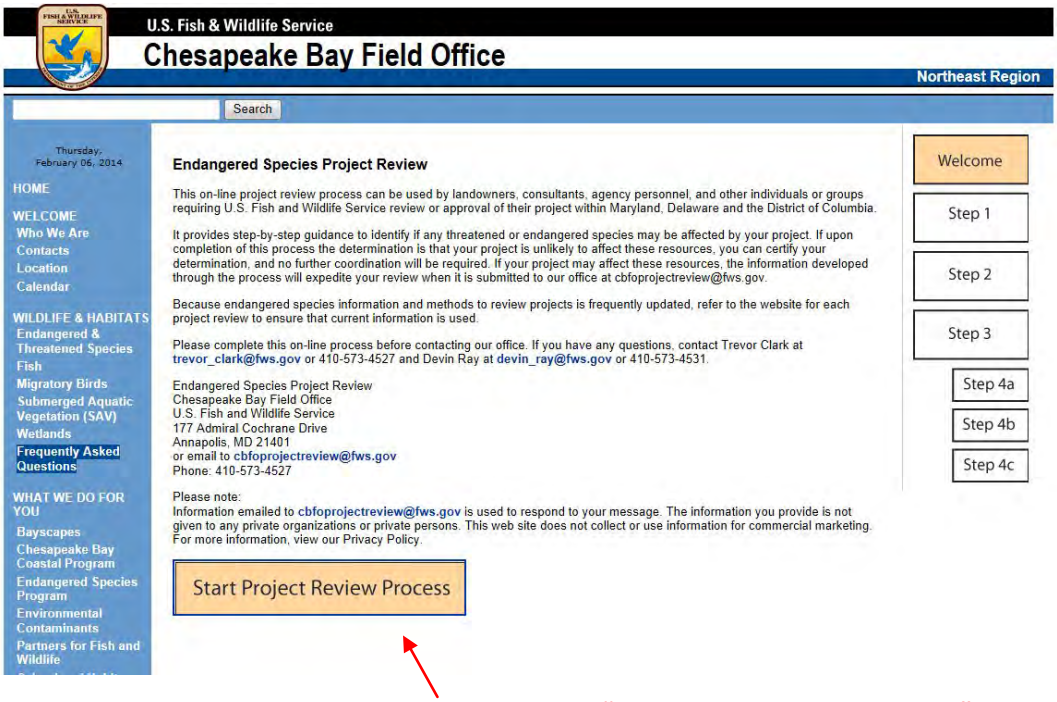
Very truly yours,

<<your name>>
<<your title>>
<<your address>>

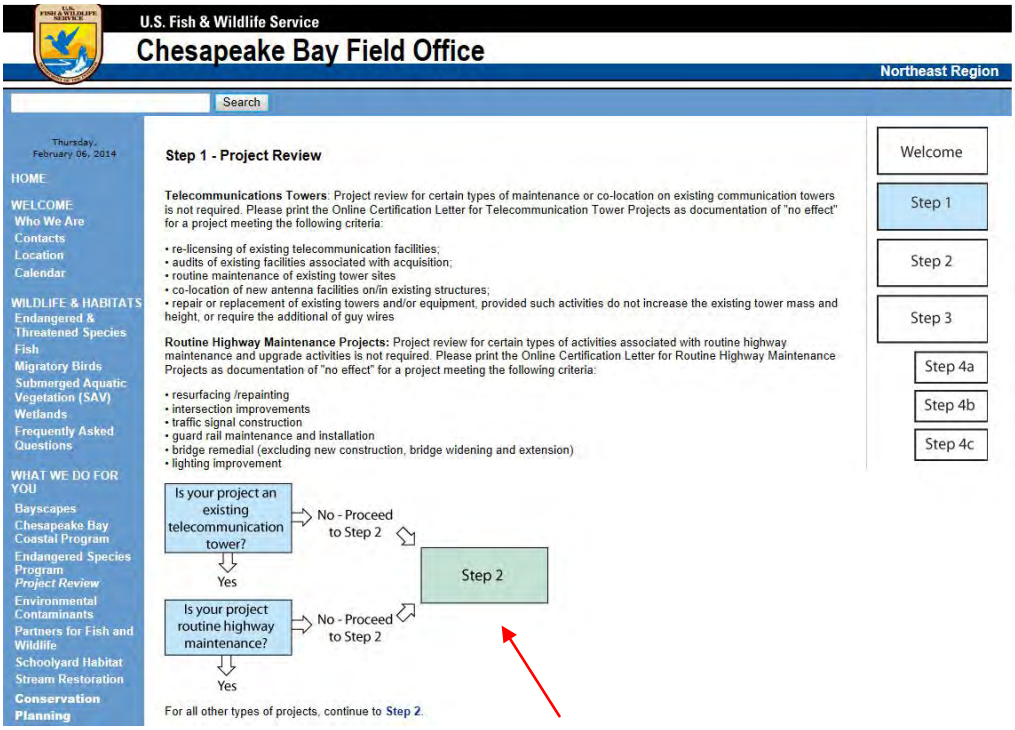
Enclosures (1)

US Fish and Wildlife Service-Chesapeake Bay Field Office
Federally Endangered Species Review Process-Online Tool

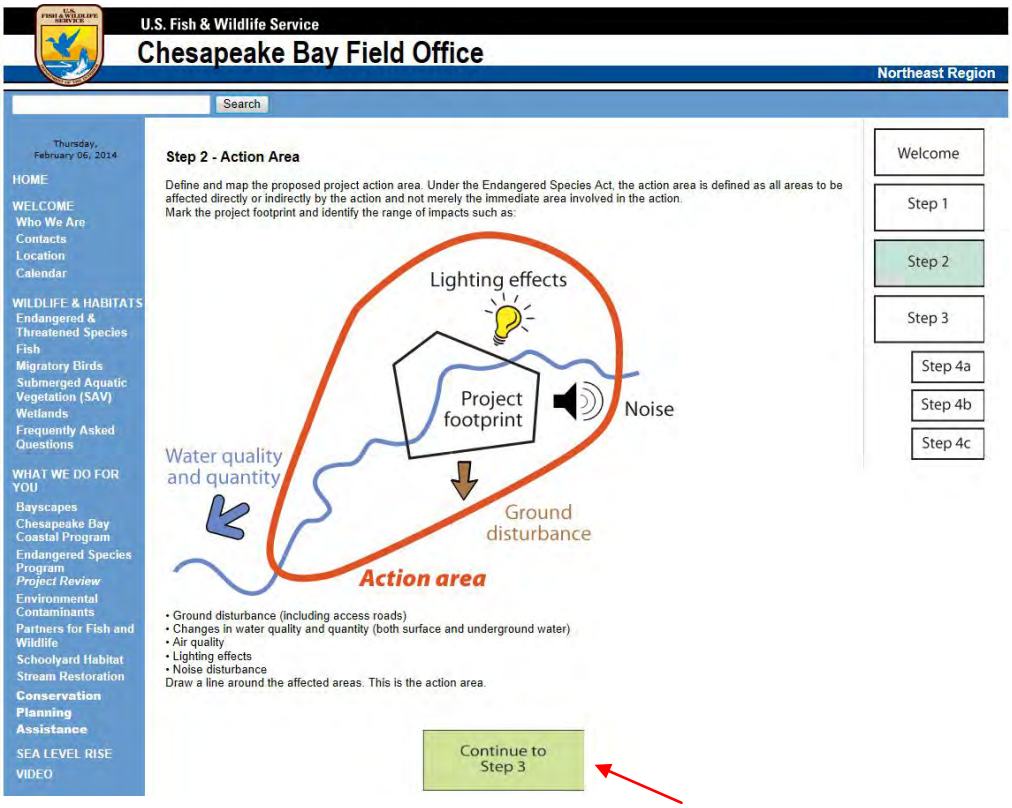
The tool can be found at the following link:
http://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Index.html



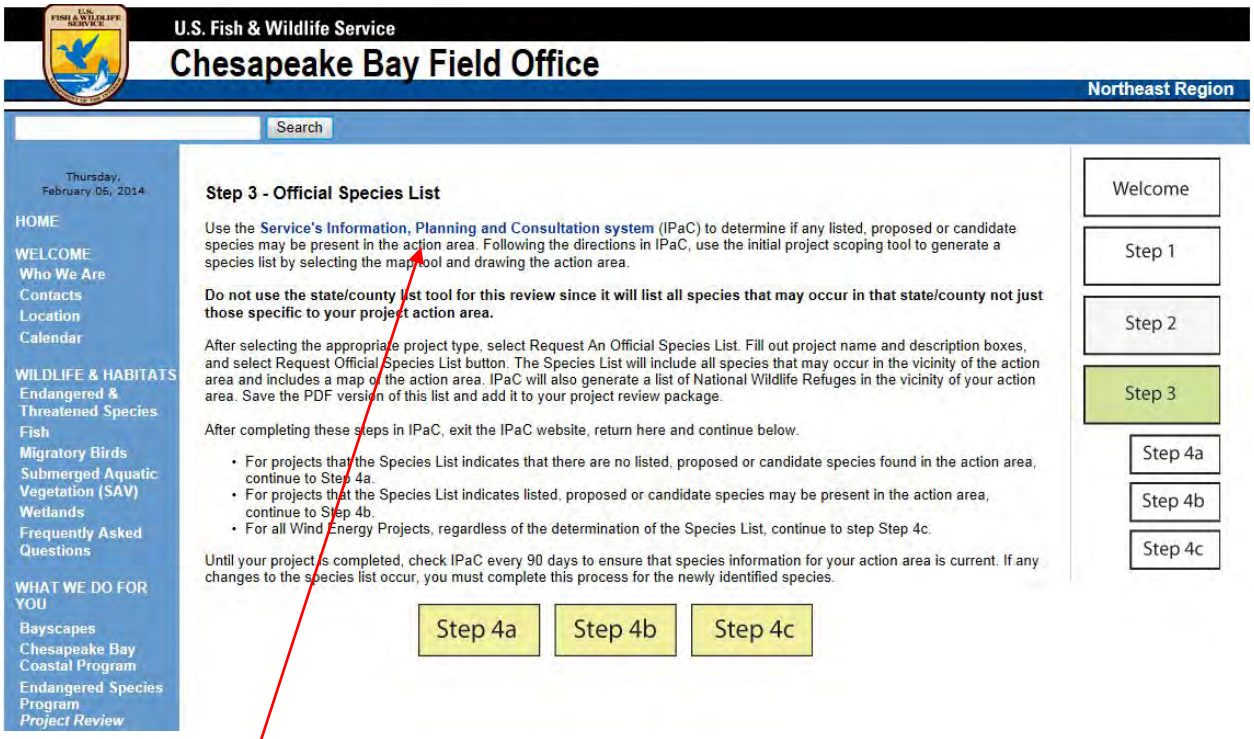
To start, click on "Start Project Review Process"



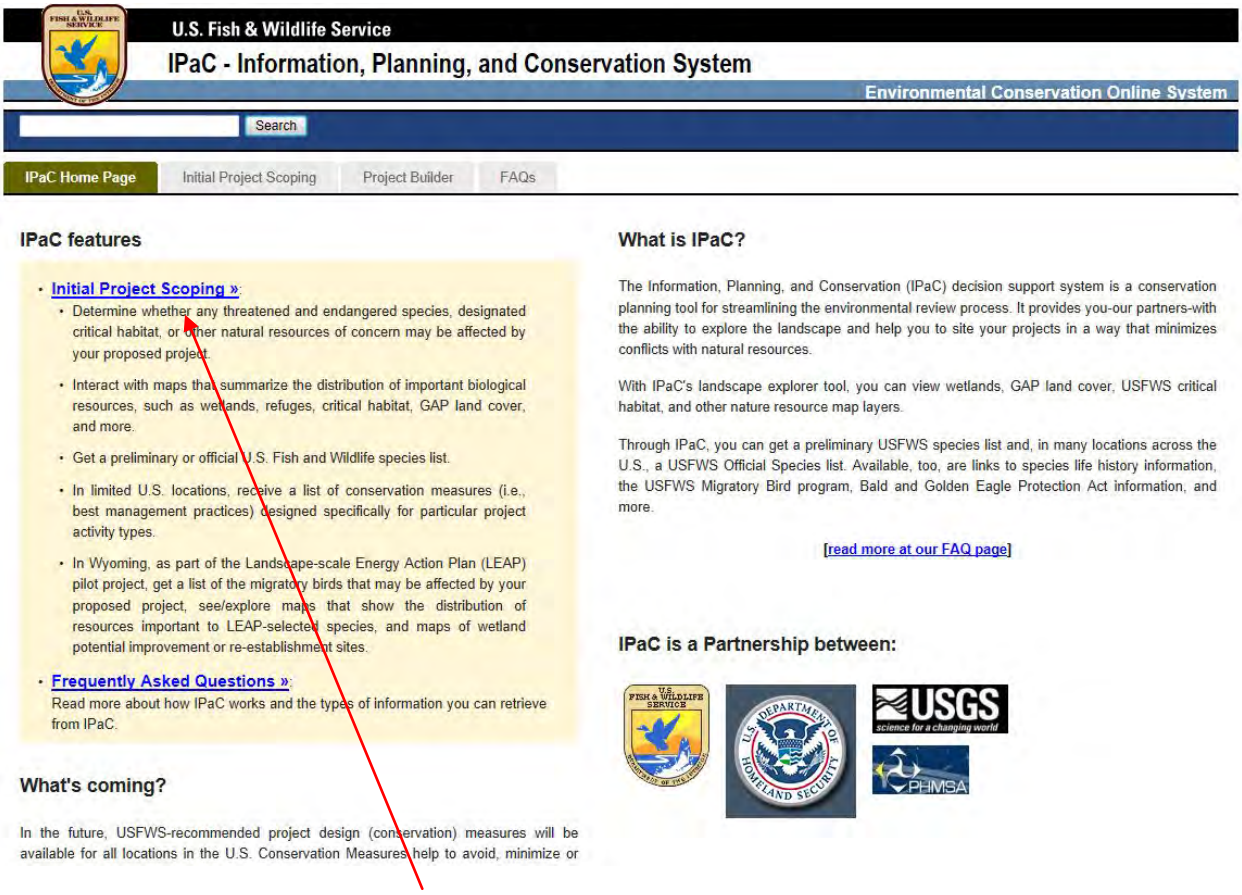
Next, click on "Step 2"



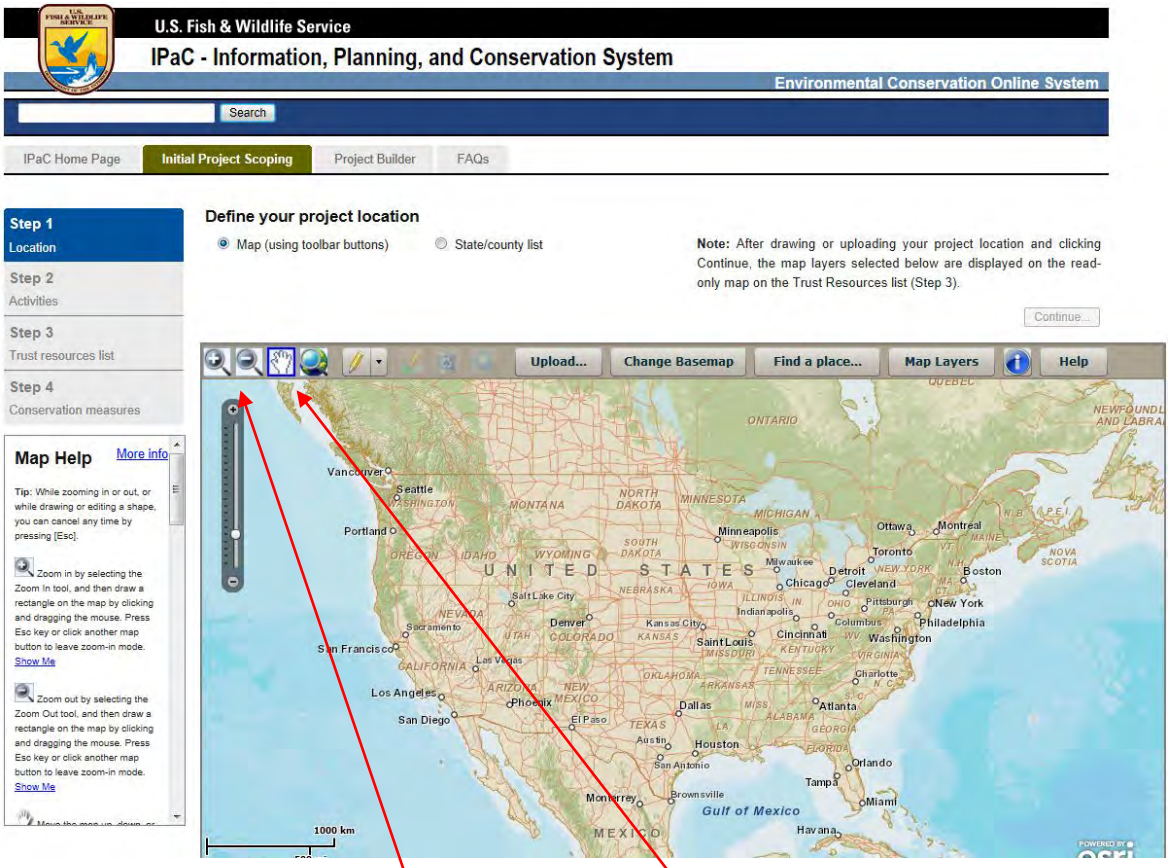
Click "Continue to Step 3"



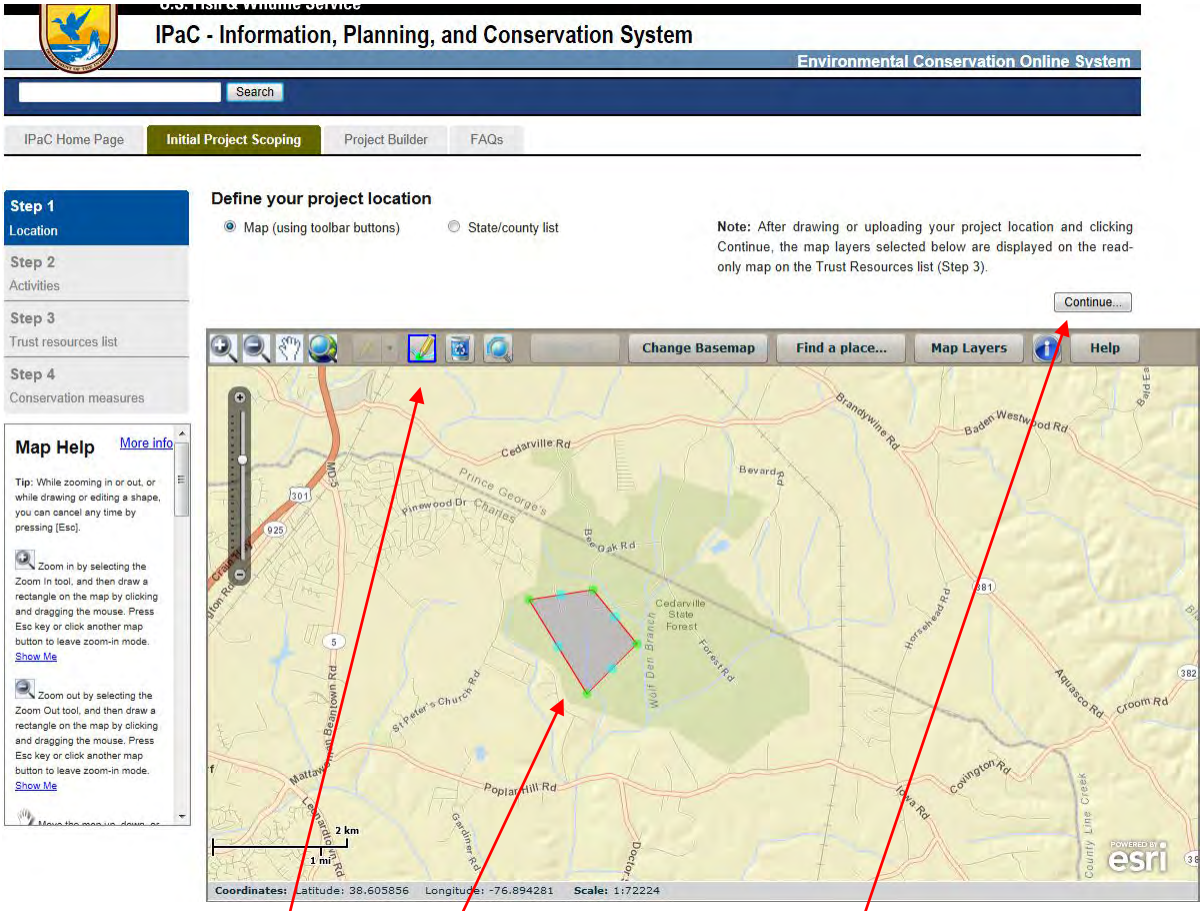
Next, click on the highlighted text "Service's Information, Planning and Consultation system".



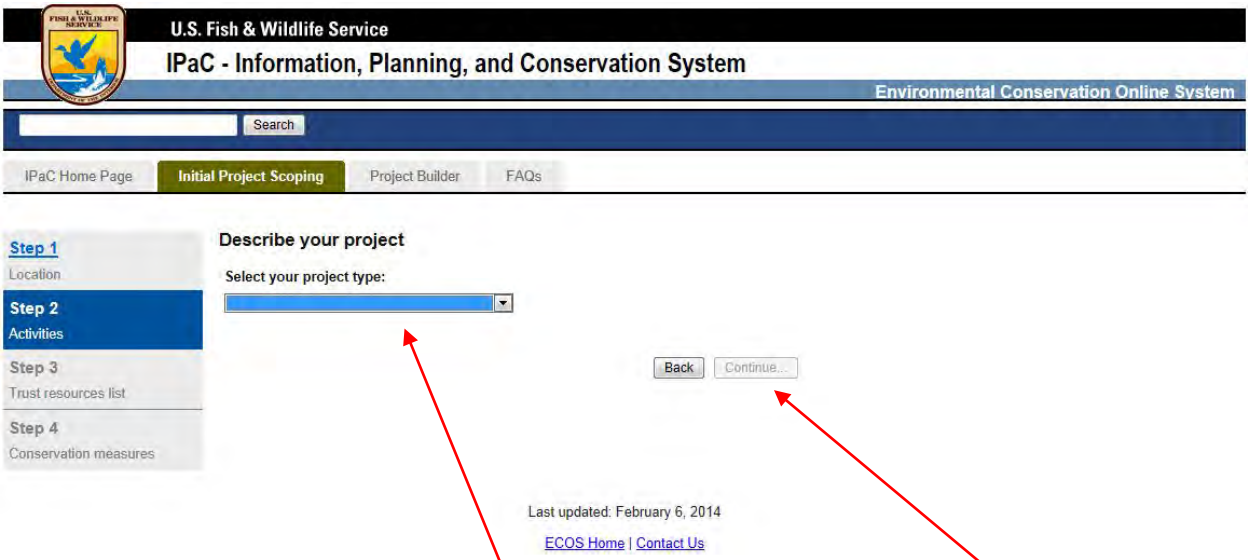
Click on "Initial Project Scoping"



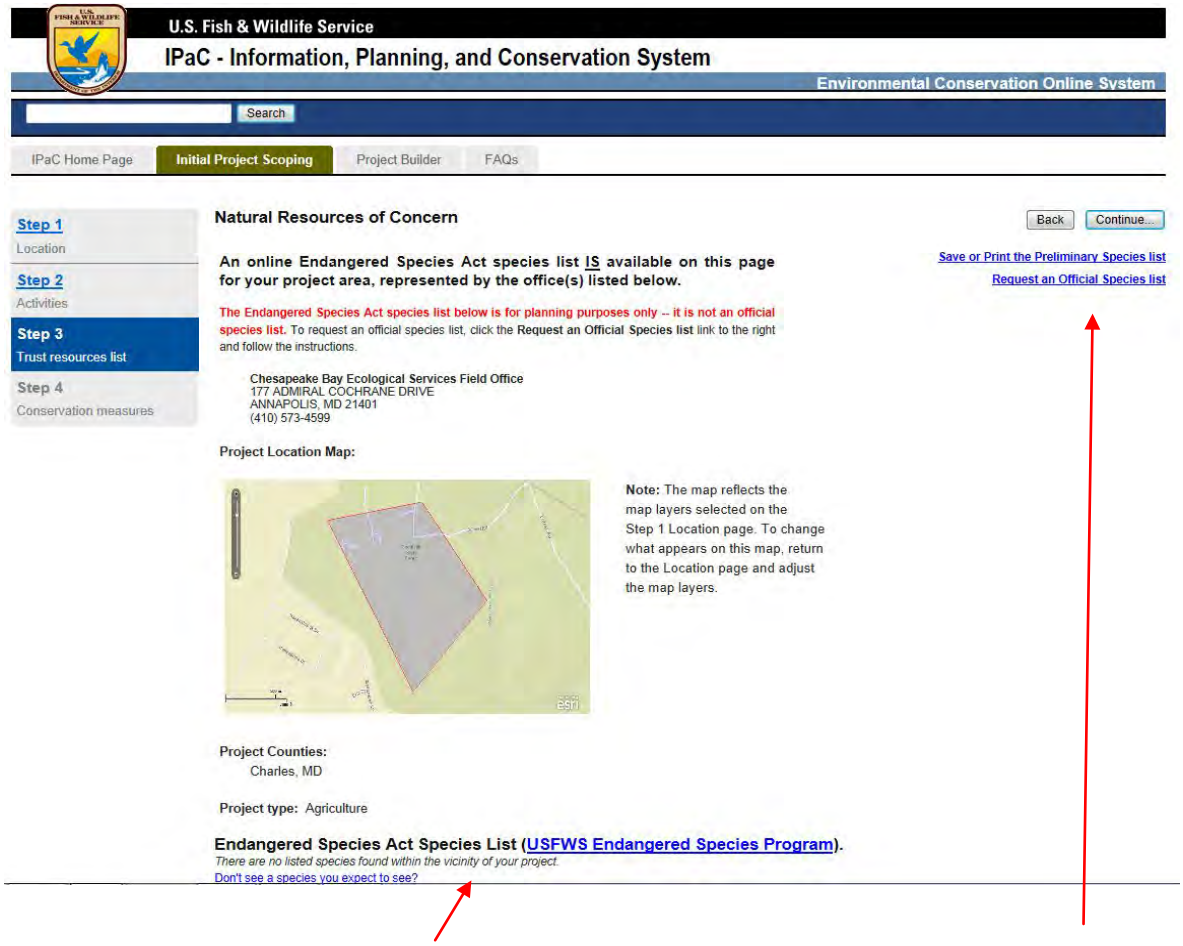
Zoom in to the project area using the map tools. Use the "pan" tool to move the map.



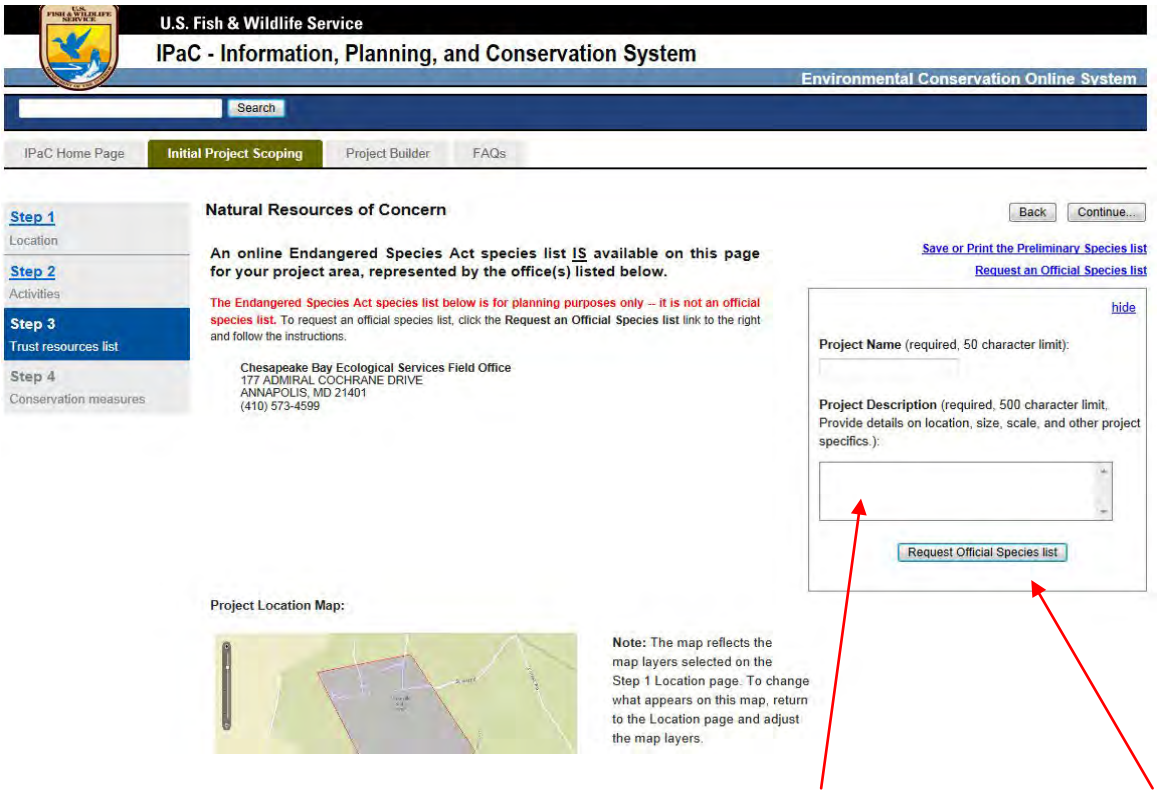
Using the drawing tool, draw a polygon around the specific project area. Include any area that will be disturbed during construction including vehicular/equipment/foot traffic access, vegetation removal, stormwater management, etc. When you are done, click "continue".



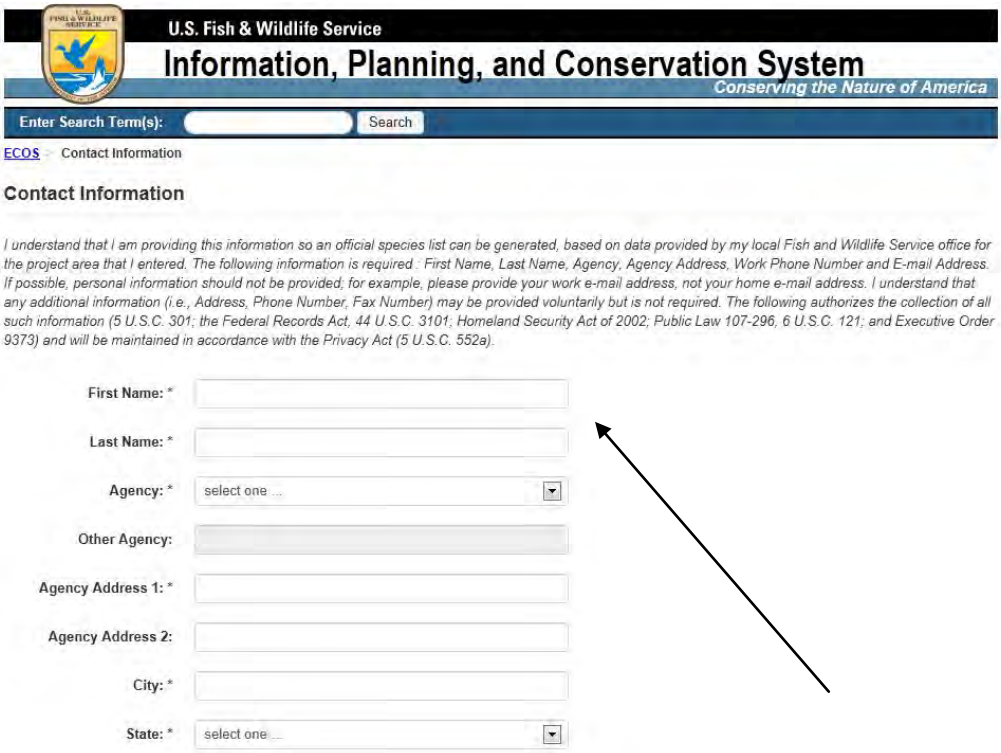
Next, select your project type from the drop down list. This is NOT all inclusive list so choose the one that best describes the project. If it is trail construction, click "transportation". Then click "continue".



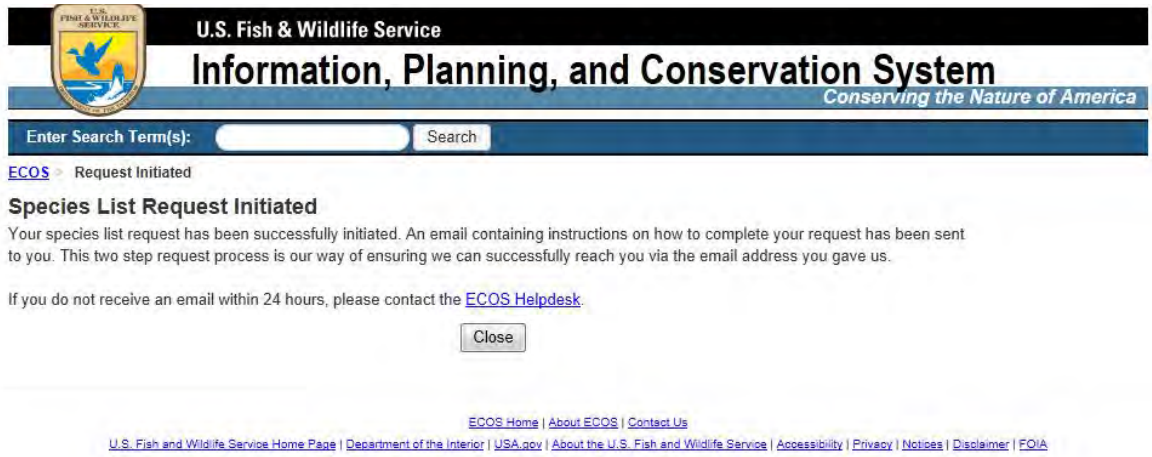
Note whether endangered species are within the vicinity of the project. Click, "Request an Official Species List".



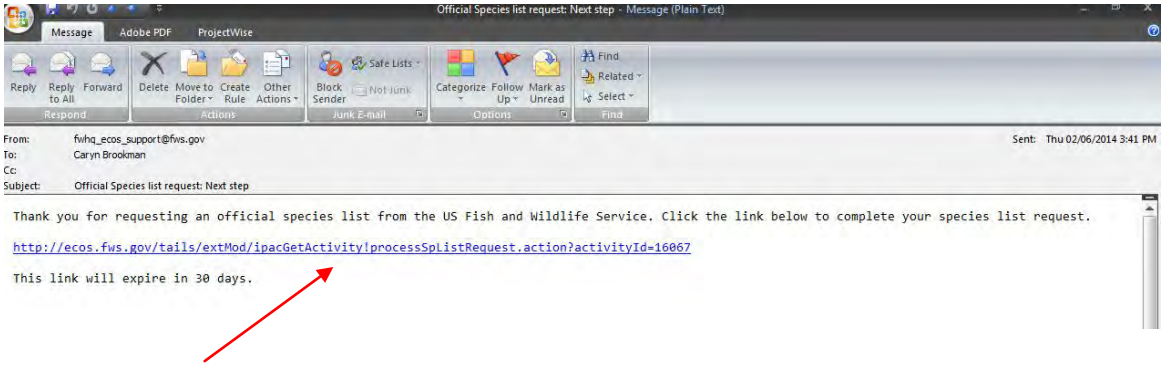
Add the project name and description; click "Request Official Species List".



Add your contact information and click "submit".



An email from USFWS will be sent immediately to your email address.



Click on the link in the email to get the preliminary species list.

If *no species* were identified, save the attached "preliminary" list as the *final* correspondence from FWS.

U.S. Fish & Wildlife Service

Information, Planning, and Conservation System

Conserving the Nature of America

Enter Search Term(s): Search

COS > Official Species List

)fficial Species List Request Completed

reliminary Species Lists

n official species list is not immediately available for the office shown below. The office has received your request and you should receive n official species list within 30 days. If you wish, you can download a preliminary species list using the link provided. Feel free to contact ıis office if you have questions. If office website links are shown, please visit those websites for further information.

Chesapeake Bay Ecological Services Field Office
177 ADMIRAL COCHRANE DRIVE
ANNAPOLIS, MD 21401
(410) 573-4599
Preliminary Species List Document

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United States Department of the Interior

FISH AND WILDLIFE SERVICE
Chesapeake Bay Ecological Services Field Office
177 ADMIRAL COCHRANE DRIVE
ANNAPOLIS, MD 21401
PHONE: (410)573-4599 FAX: (410)266-9127

Consultation Tracking Number: 05E2CB00-2014-SLI-0331 February 06, 2014
Project Name: MD 410 at MD 212

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project.

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Preliminary

Use the attached letter as the final correspondence from FWS, *if no species were found within the project area.*

"Step 4b"- If the preliminary species list identified the presence of an endangered species, you must submit a project review package including a letter describing the project in detail, a map of the action area, and a copy of the "Preliminary Species List" that you received in the return email from USFWS.

The packages must be submitted electronically to cbfoprojectreview@fws.gov. Please add the following in the subject line "Project Funded through SHA under the National Recreational Trails Program (or Safe Routes to School, or Scenic Byway, etc) and the project title.

U.S. Fish & Wildlife Service

Chesapeake Bay Field Office

Northeast Region

Search

Thursday, February 06, 2014

HOME

WELCOME
- Who We Are
- Contacts
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- Calendar

WILDLIFE & HABITATS
- Endangered & Threatened Species
- Fish
- Migratory Birds
- Submerged Aquatic Vegetation (SAV)
- Wetlands
- Frequently Asked Questions

WHAT WE DO FOR YOU
- Bayscapes
- Chesapeake Bay Coastal Program
- Endangered Species Program
- *Project Review*
- Environmental Contaminants
- Partners for Fish and Wildlife
- Schoolyard Habitat
- Stream Restoration
- **Conservation Planning Assistance**

SEA LEVEL RISE

VIDEO

Step 4b - Listed, Proposed or Candidate Species

If the Species List determination indicates that listed, proposed or candidate species may be present in your action area, submit a complete project review package to this office for review. Include a letter describing the project, map of action area and the PDF of the preliminary endangered species list from the IPaC site.

Submit project review packages electronically to **cbfoprojectreview@fws.gov**. Indicate in subject line Project Review Request. All project reviews will receive a return receipt to inform you that your project has been successfully submitted to this office.

Please note that any single email, including attachments, must be smaller than 25 MB. If larger than 25 MB, spread out multiple attachments among several emails (use the same subject name and project reference in all emails related to an individual project).

If this is not practical, please mail a hard copy or CD containing the project review package to our office:

Project Review
US Fish & Wildlife Service
Chesapeake Bay Field Office
177 Admiral Cochrane Drive
Annapolis, MD 21401

Maintain complete copies of these documents in your files since they are part of your official record of compliance.

For more information contact:
Trevor Clark; **trevor_clark@fws.gov**; 410-573-4527
Devin Ray; **devin_ray@fws.gov**; 410-573-4531

Submit these documents for projects that may have candidate species in your action area

Letter from you describing your project | *Map of Action Area* | *PDF of preliminary species list*

Welcome

Step 1

Step 2

Step 3

Step 4a

Step 4b

Step 4c

APPENDIX O: MAP-21

Moving Ahead for Progress in the 21st Century Act (MAP-21)

MAP-21 was signed into law on July 6, 2012. MAP-21 transforms the framework for investments to guide the growth and development of the country's vital transportation infrastructure through streamlined transportation programs and accelerated project delivery. Compliance with MAP-21 provisions affects eligibility for funding of LG projects.

MAP-21 established a new program to provide for a variety of alternative transportation projects. Under MAP-21, local governments are eligible to receive Transportation Alternatives Program (TAP) funding for qualified projects including: on- and off-road pedestrian and bicycle trail facilities, infrastructure projects for improving non-driver access to public transportation and enhanced mobility, community improvement activities, and environmental mitigation; recreational trail program projects; safe routes to school projects; and projects for planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.

MAP-21 legislation was enacted after SAFETEA-LU and there are additional provisions in the new law that are applicable to the local agencies.